

# PERAC | 840 *REGULATIONS* | CMR

# PERAC Regulations | 840 CMR

PERAC | FIVE MIDDLESEX AVENUE | THIRD FLOOR | SOMERVILLE, MA | 02145

PH: 617.666.4446 | FAX: 617.628.4002 | TTY: 617.591.8917 | WEB: [WWW.MASS.GOV/PERAC](http://WWW.MASS.GOV/PERAC)

## Public Employee Retirement Administration Commission

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William Francis Galvin  
Secretary of the Commonwealth  
State Publications and Regulations  
State House, Room 116  
Boston, Massachusetts 02108  
Telephone: (617) 727-2834

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# 840 CMR 1.00

## Protection of Interests of Retirement System Members and Their Beneficiaries

### Section

- 1.01 Board Members' Duty
- 1.02 Liability for Breach of Fiduciary Duty
- 1.03 Prohibition Against Certain Persons Holding Certain Positions
- 1.04 Investment

840 CMR 1.00, to protect the interests of retirement system members and their beneficiaries, is promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 1.00 protects the interests of retirement system members and their beneficiaries.

### 1.01

#### Board Members' Duty

A board member shall discharge all of his/her duties solely in the interest of members and their beneficiaries, and

(1) For the exclusive purpose of:

- (a) providing benefits to members and their beneficiaries; and
- (b) defraying reasonable expenses of administering the system.

(2) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

(3) By diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(4) In accordance with the Massachusetts General Laws, the rules and regulations promulgated by the Commission, and rules and regulations adopted by the Board and approved by the Commission.

## 1.02 Liability For Breach of Fiduciary Duty

(1) Failure to comply with the fiduciary standard set forth in M.G.L. c. 32, § 23 and in 840 CMR 1.01 may subject the fiduciary to personal liability for any losses to the system resulting from such failure.

(2) If a fiduciary knowingly participates in or knowingly conceals an act or omission of a co-fiduciary which is a breach of fiduciary duty the fiduciary may be subject to personal liability for any losses to the system resulting from such breach.

(3) If, by failing to comply with his/her fiduciary duty, a fiduciary enables a co-fiduciary to breach his/her fiduciary duty, the fiduciary may be subject to personal liability for any losses to the system resulting from such breach.

(4) If a fiduciary has knowledge of a breach of fiduciary duty by a co-fiduciary and the fiduciary fails to make reasonable efforts under the circumstances to remedy the breach of fiduciary duty, the fiduciary may be subject to personal liability for any losses to the system resulting from such breach.

## 1.03 Prohibition Against Certain Persons Holding Certain Positions

No individual who has been convicted of robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of state or federal law defined in Section 102(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in Section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of Section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of Chapter 63 of Title 18, United States Code, a violation of Section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18 United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes, or a crime in which any of the foregoing is an element or has been found by the Commission or any court to have violated his/her fiduciary duty or has been found by the Ethics Commission or any court to have violated M.G.L. c. 268A, shall serve or be permitted to serve:

(1) As a member, administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee or representative in any capacity of a board.

(2) As a consultant, manager or provider of goods or services to a board.

(3) In any capacity that involves decision making authority or custody or control of the monies, funds, assets or property of any system.

## 1.04 Investment

Members of a board which has received an exemption pursuant to 840 CMR 19.00 and has delegated investment discretion for assets to a qualified investment manager or is participating in or purchasing shares of the PRIT Fund shall not be liable for the acts or omissions of the qualified investment manager or of the PRIM Board, provided the selection and retention of such investment manager or of the PRIM Board is consistent with the members' fiduciary duty.

## Regulatory Authority

840 CMR 1.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.

# 840 CMR 2.00

## RETIREMENT BOARD TRAVEL

### Section

- 2.01 General Provisions
- 2.02 Meaning of Terms
- 2.03 Board Authorization of Travel and Travel Related Expenditures
- 2.04 Required Documentation for Reimbursement
- 2.05 Travel Arrangements
- 2.06 Transportation
- 2.07 Lodging
- 2.08 Meals
- 2.09 Other Reimbursable and Non-Reimbursable Expenses
- 2.10 Cash Advances
- 2.11 Board Credit Cards
- 2.12 Personal Travel Combined with Board Related Travel
- 2.13 Payments or Reimbursements for Expenses by Third Parties
- 2.14 Violation of These Regulations or Board Travel Supplementary Regulations

### 2.01

#### General Provisions

1. 840 CMR 2.00 is the standard rule for travel and travel related expenditures by Retirement Board Members and Retirement Board staff members. The Public Employee Retirement Administration Commission recognizes that Retirement Board Members and the Retirement Board staff must perform their fiduciary duties in an efficient, effective and informed manner. All travel related expenses that are to be paid for by the Board shall be related to the purpose of the authorized travel and shall be cost-effective.
2. The Commission recognizes the importance of continuing education; the need for informed decision making by Retirement Board Members; and the need for a broader public pension perspective, gained through association with other Retirement Boards and administrators, both within the Commonwealth of Massachusetts and throughout the nation.
3. Except as otherwise provided by the Commission or by supplementary rules of a particular Retirement Board approved by the Commission pursuant to 840 CMR 14.02 all travel by Retirement Board Members and Board staff shall comply with 840 CMR 2.00.
4. Any Retirement Board supplementary regulation approved by the Commission prior to June 6, 2003 shall be deemed to be consistent with 840 CMR 2.00.

Retirement Boards may adopt supplementary regulations to supplement and expand upon the regulations contained in 840 CMR 2.00. Any such Board regulations are to be submitted to the Commission for review and approval as required by the provisions of G.L. c. 7, § 50 and c. 32, § 21(4).

## 2.02

### Meaning of Terms

Terms common to these regulations and G.L. c. 268A shall have the meaning ascribed to them by G.L. c. 268A and rulings issued pursuant to that law. The regulations contained in 840 CMR 2.00 are in addition to, and, in some respects, more stringent than the provisions of G.L. c. 268A. Unless otherwise defined by the provisions of G.L. c. 32 or regulations promulgated by the Commission or by G.L. c. 268A and rulings issued pursuant to that law, the usual and customary definitions for terms used in these regulations shall apply.

## 2.03

### Board Authorization of Travel and Travel Related Expenditures

The Retirement Board shall pay for or make reimbursement to Board Members and the staff of the Retirement Board for all travel and lodging expenses except as specifically authorized pursuant to 840 CMR 2.13 for expenses related to legitimate speaking engagements.

1. Travel and related expenses are to be approved by the Board in advance of the travel.
2. Requests for travel by Board Members and the Retirement Board Executive Director/Administrator shall be placed on a Board meeting agenda, discussed in open session and approved by a majority vote of the Members of the Board present and voting. The meeting minutes shall reflect the Board's action and the extent of the authorization.
3. The nature of the travel, its purpose and estimated cost shall be outlined on a travel authorization form. Brochures for seminars or other presentations should accompany the request for travel where available.
4. A statement describing the presentation, conference or seminar should be entered into the minutes of the meeting following the travel.
5. A Board may authorize the Executive Director/Board Administrator to approve travel for other members of the Board's staff. The Board should establish policies and procedures for staff travel. Such policies and procedures shall be consistent with 840 CMR 2.00.

6. Boards are encouraged to seek and negotiate to obtain the most cost effective means of travel and travel related expenses.

## 2.04

### Required Documentation for Reimbursement

1. The Board shall develop a form to be used in connection with any requests for reimbursement, requiring that the traveler certify that the expenses were incurred and were necessary and incidental to the approved travel.
2. All requests for reimbursement shall be completed and properly approved after incurring any travel, transportation or meal or other travel related expenses and before reimbursement takes place. The Retirement Boards shall require that requests for reimbursement be submitted within a reasonable time after the expenses are incurred, but in no event longer than 60 days after the expenses were incurred. If expenses for a single event were incurred over a number of days, requests for reimbursement shall be submitted no later than 60 days from the last day that expenses were incurred.
3. Original itemized receipts must be submitted for all expenses including transportation, lodging, and other expenses incidental to travel.
4. Travel related expenses that are under \$10 (such as gratuities) should be fully described and reimbursed based on the traveler's certification that the expenses were necessary and incidental to the approved travel.
5. Any travel related expenditures which have not been properly documented or approved or are not in conformity with 840 CMR 2.00 must be rejected or adjusted.
6. Reimbursement shall only be made to the person who actually made payment for the expense.
7. The reimbursement request form must be signed by the person seeking reimbursement and signed under the pains and penalties of perjury.

## 2.05

### Travel Arrangements

1. The Board may designate a Board staff member to be responsible for making all travel arrangements and for assisting Board Members and Board staff in completing authorization and reimbursement forms. If a Board Member or Board staff member elects to make his or her own travel arrangements, the provisions of 840 CMR 2.00 shall apply.

2. When making travel arrangements, government rates, business rates or the most cost effective rate will be secured. The Board must be satisfied that the rate is fair and reasonable before reimbursement is approved.

3. The Board may authorize an extended stay if the net cost to the Board will be lower. For example, if airline fare is lowered by staying an extra day and the cost of accommodations and meals for that extra day results in a net savings to the Board, an extended stay can be authorized.

## 2.06 Transportation

1. Cost effective public conveyances, (airline, train, bus, automobile rental, taxi, or other form of transportation) shall be utilized.

2. All travel should be at the lowest fare available, generally economy/coach fare. The Board may, by supplementary regulation, submitted and approved by the Commission, establish routing criteria, for example, requiring no more than one interim stop each way; not requiring more than one scheduled airplane transfer each way; and allowing for reasonable departure and arrival times.

3. A Retirement Board shall not make payment or reimbursement for airline club memberships.

4. If a Retirement Board authorizes the use of rental cars, the Board may, by supplementary regulation, submitted and approved by the Commission establish that the source of such cars shall be a national rental agency, and that the rental cars shall be "standard class". It is the traveler's responsibility to verify that the rate charged is the rate negotiated.

5. The Retirement Board shall determine whether optional insurance coverage for rental cars will be required.

6. Any motor vehicle accidents, which occur while using a rental car while on Board-approved travel, are to be reported as soon as practicable, in writing to the appropriate authorities, with copies of all such reports provided to the Board.

7. No reimbursements shall be made for fines or other expenses incurred as a result of traffic violations while on Board-approved travel. The traveler is personally responsible for such expenses.

8. The Retirement Board shall, by supplementary regulation, submitted and approved by the Commission, establish the allowable rate of reimbursement for use of personal motor vehicle. The per mile rate of reimbursement shall not

exceed the amount allowed by the Internal Revenue Service. Parking fees and toll charges may be reimbursed, subject to proper documentation.

## 2.07 Lodging

1. All reservations for accommodations should be made in advance. It is the traveler's responsibility to verify that the rate charged is the rate negotiated. Reimbursement for accommodations shall not exceed the amount charged for "standard" accommodations. If accommodations are included as a part of a registration fee, the Board must be satisfied that the rate for such accommodations is fair and reasonable before reimbursement or payment is approved.
2. Reimbursement is prohibited if lodging is included in the cost of registration for a conference or seminar.

## 2.08 Meals

1. Retirement Boards must, by supplementary regulation, submitted and approved by the Commission, establish and identify the maximum daily reimbursable amount for the cost of meals while on Board authorized travel. The Board may, by supplementary regulation, submitted and approved by the Commission, allow for reimbursement in excess of the allowable amount for travel to high-cost locations.
2. Reimbursement is prohibited if meals are included in the cost of registration for a conference or seminar. If the Board determines that special circumstances require a Board member or Board staff member to take meals other than those included in the cost of registration, reimbursement may be made provided that all provisions of 840 CMR 2.00 are met. The special circumstances must be discussed in a Board meeting and the Board's determination must be reflected in the minutes of the Board.
3. If reimbursement is sought for meal expenses for others, those individuals are to be identified along with their affiliation and a description of the purpose of the meeting. Reimbursement shall be made only for meetings that are for business purposes.

## 2.09 Other Reimbursable and Non-Reimbursable Expenses

1. Retirement Boards may reimburse Board Members or Board staff members for the following items:

- a) gratuities paid in accordance with local custom;
- b) telephone expenses limited to Board or business related calls;
- c) internet connections charges;
- d) costs for faxing related to Board business; or
- e) costs for necessary copying related to Board business.

2. Retirement Boards shall not reimburse Board Members or Board staff members for the following items:

- a) personal expenses, for example, in-room movies, mini-bar charges, gym fees, entertainment or recreational expenses, laundry and dry cleaning;
- b) any payments for personal services; or
- c) payments for alcoholic beverages.

## 2.10 Cash Advances

Retirement Boards shall not make cash advances to Board Members or Board staff members in connection with anticipated expenses.

## 2.11 Board Credit Cards

1. Retirement Boards may, by supplementary regulation, submitted and approved by the Commission, authorize usage of credit cards issued to the Board. If usage of such credit cards is allowed, any personal use of credit cards issued to the Board is prohibited. The credit card billings shall be issued to the Board office and that card user shall be required to provide receipts for all expenses included in the statement. If receipts are not provided, the user will immediately reimburse the Board for those items that appear on the credit card billing.

2. Credit cards issued to the Board are not to be used to purchase supplies or other items that the Board, the Board Members or the Board's staff use on a regular basis and which can be readily anticipated and purchased by way of a competitive process.

## 2.12

### Personal Travel Combined with Board Related Travel

If personal travel is combined with Board related travel, the personal portion of the travel and related expenses will be clearly identified and paid for by the traveler. Travel expenses or any other expenses incurred by a spouse, relative, friend or other individual accompanying a Board Member or Board staff member will be considered to be personal travel and will, in no event, be a proper expense of the Retirement Board.

## 2.13

### Payments or Reimbursements for Expenses by Third Parties

1. Providing to or receipt by a Board Member or staff member of anything of substantial value from any person, firm, partnership or other entity which may be reasonably expected to seek to do business with or is seeking to do business with or presently is doing business with a Retirement Board or any person, firm or other entity that solicits or makes referrals or which may be reasonably expected to solicit or make referrals of any client on behalf of such a person, firm, partnership or other entity is strictly prohibited. Providing to and the receipt of anything of substantial value from such a person, firm, partnership or other entity indirectly through any person, firm, association, organization or other entity is strictly prohibited.
2. In instances where a Retirement Board Member or Board staff member participates in a legitimate speaking engagement, the Board shall pay all costs and expenses related to such speaking engagement, provided, that the Board Member or Board staff member complies with all of the Board's travel regulations. The Board may accept reimbursement for such travel related expenses of a Board Member or a member of the Board's staff from the third party, only under the following limited circumstances:
  - a) A Board Member or a Board staff member may participate in legitimate speaking engagements in connection with their positions on the Retirement Board or as a member of the Board's staff and the Board may accept reimbursements from third parties necessary to cover travel related costs for such engagements.
  - b) Acceptance of an honorarium or any other form of compensation is strictly prohibited.
  - c) To be considered a legitimate speaking engagement, the presentation must be formally scheduled on the agenda of a convention or conference.
  - d) The speaking engagement must be scheduled in advance of the Board

Member's or Board staff member's arrival at the event.

e) The presentation must be before an organization that would normally have outside speakers address them at such an event.

f) The presentation cannot be perfunctory, but should significantly contribute to the event, taking into account such factors as the length of the speech or presentation, the size of the audience, and the extent to which the speaker is providing substantive or unique information or viewpoints.

g) The Retirement Board can be reimbursed by a third party for expenses only to the extent necessary for making the speech or presentation.

h) Under no circumstances can a Board Member or Board staff member receive reimbursement or any other payment or compensation from a third party.

3. In instances where a Retirement Board Member or Board staff member participates in a non-profit professional organization related to public pension or public retirement, the Retirement Board may be reimbursed by the organization for the expenses related to such participation. The travel or participation must be approved by the Board in advance of any expenditures, and the minutes of the Board must note this action. No organization, association or group of any sort that is comprised of or supported by any person, firm, partnership or other entity which may be reasonably expected to seek to do business with or is seeking to do business with or presently is doing business with a Retirement Board shall reimburse a Retirement Board for any expenses of a Board Member or Board staff member to participate in any activities of that organization. Likewise, no organization, association or group of any sort that is comprised of or supported by any person, firm or other entity that solicits or makes referrals or which may be reasonably expected to solicit or make referrals to a Retirement Board of any client on behalf of such a person, firm, partnership or other entity shall reimburse a Retirement Board for any expenses of a Board Member or Board staff member to participate in any activities of that organization.

## 2.14 Violation of These Regulations or Board Travel Supplementary Regulations

In addition to any remedies available pursuant to any statute or any regulation, any person or entity that violates 840 CMR 2.00 or any Retirement Board supplementary regulation approved by the Commission prior to the effective date of 840 CMR 2.00 shall be deemed to have violated the provisions of 840 CMR 17.00 and shall be subject to removal as a qualified investment manager or consultant pursuant to 840 CMR 17.04(10). In addition, the Commission shall not grant an exemption pursuant to 840 CMR 19.02 or a qualification pursuant to 840 CMR 26.04 if any person or entity that has violated 840

CMR 2.00 or any Retirement Board supplementary regulation approved by the Commission prior to the effective date of 840 CMR 2.00 is the subject of the filing pursuant to those provisions.

## Regulatory Authority

(840 CMR 3.00 RESERVED)

# 840 CMR 4.00

## Financial Operations/Standard Method of Accounting

### Section

- 4.01 Ledger Accounts, Cash Book and Journal
- 4.02 Entries and Posting of Accounts; Trial Balance
- 4.03 Copies to be Sent to PERAC
- 4.04 Failure to File Financial Reports

840 CMR 4.00, establishing standard methods of accounting for boards, is promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, § 21. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 4.00 shall govern methods of accounting of all retirement boards.

### 4.01

#### Ledger Accounts, Cash Book and Journal

Every board shall establish, number and maintain ledger accounts in the form prescribed by the Commission and shall maintain a cash book, the format of which shall be provided or approved by the Commission, and a journal for adjusting entries.

### 4.02

#### Entries and Posting of Accounts; Trial Balance

- (1) Entries shall be entered on a daily basis.
- (2) The Cash Book and Journal shall be posted to the ledger accounts monthly.
- (3) A Trial Balance shall be performed monthly.

### 4.03

#### Copies to be Sent to PERAC

- (1) Within four weeks of the close of each month, after all entries for the month have been posted and a trial balance performed, the board shall send to the Commission a photocopy

of the following for the month:

- (a) cash book entries;
- (b) trial balance; and
- (c) journal entries

(2) The board shall send or have sent to the Commission a copy of all custodian statements received by the board within four weeks of the close of the month. Such statements shall be separated into the following five categories: cash, short term investments\*, fixed income investments, equities, and pooled funds. Such statements shall include, but not be limited to:

- (a) monthly custodian bank statements which detail transaction activity including investment income, investments purchased, accrued interest paid, investments sold, book value of investments sold, profit/loss on investments sold, accrued interest sold, cusip numbers, name of brokers and commissions paid, trade receivables and payables, trade dates, settlement dates and actual settlement dates.

\*Short term investments are defined as U.S. Treasury Bills, Commercial Paper, Certificates of Deposit, Repurchase Agreements, Cooperative Shares, Savings and Loan Shares, Money Market and Term Deposits.

- (b) monthly account appraisal which provides an alphabetical listing of assets held for each category; information for each asset should include a complete description of the asset, cusip numbers, par value or number of shares, book value and market value.

(3) The board shall send or have sent to the Commission a copy of all statements received by the board within four weeks of the close of the month. Such statements shall detail the activity of the retirement system including purchases and sales of fund shares, income, dividend re-investments, fund expenses, and ownership interest of the retirement system in any commingled funds, including, but not limited to, separate accounts, bank pooled funds, mutual funds, group trusts and limited partnerships.

## 4.04 Failure to File Financial Reports

Any retirement board failing to file the financial statements and reports required by M.G.L. c. 32, § 20(5)(g), or by 840 CMR 4.03 shall be subject to the penalties provided by M.G.L. c. 32, § 24(2) and to revocation of exemption pursuant to 840 CMR 19.00.

## Regulatory Authority

840 CMR 4.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 5.00

## Records and Reports

### Section

- 5.01 General Provisions
- 5.02 Retirement Board Staff
- 5.03 Annual Report
- 5.04 Appropriation Data
- 5.05 Automation Report

### 5.01

#### General Provisions

840 CMR 5.00 is the standard rule for records and reports which shall be required by the Public Employee Retirement Administration Commission. Except as otherwise provided by the Commission or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, all records and reports shall be required as of the dates outlined in 840 CMR 5.00 and as outlined in M.G.L. c. 32.

### 5.02

#### Retirement Board Staff

Each retirement board shall file with the Commission at the end of each quarter, a report which identifies any changes in Members of the Retirement Board or retirement board staff which have taken place during that quarter.

### 5.03

#### Annual Report

(1) Each retirement board shall file with the Commission on or before May 1 of each year, an annual report on a form prescribed by the Commission pursuant to the provisions of M.G.L. c. 32, § 20(5)(h).

(2) A retirement board may request a filing extension by submitting to the Commission in writing a formal request, prior to May 1, which outlines the reason(s) for which a filing extension is necessary. Such request shall specify the number of days by which the board seeks to extend the filing deadline. The granting of such an extension shall be at the discretion of the Commission.

(3) If a retirement board fails to file an Annual Report by May 1, or by the date of an approved extension request, the Commission may revoke the exemption from the investment restrictions of the retirement board pursuant to M.G.L. c. 32, § 23(2)(g), after providing a 14 day written notice. Any board so requesting shall be given a hearing before the Commission's Executive Director, or his designee, to show cause as to why the exemption should not be revoked. Such request for a hearing shall be made within 14 days of said written notice.

## 5.04

### Appropriation Data

Each retirement system, shall on or before October 15 of each year, furnish the actuary with such information as is required to determine the amount to be paid for the pension fund thereof for the fiscal year commencing on the next July 1. The actuary shall on or before December 15, determine such amount and specify in a written notice to said board the amounts so required to be paid. For those systems who have not submitted the necessary information, the actuary shall determine appropriation amounts based on conservative actuarial assumptions.

## 5.05

### Automation Report

Each retirement board, 30 days prior to automating any of its functions, shall submit to the Commission a report which outlines in detail all such automation plans.

## Regulatory Authority

840 CMR 5.00: M.G.L. c. 7, § 59; c. 32, §§ 6 and 21

# 840 CMR 6.00

## Standard Rules for Disclosure of Information

### Section

- 6.01 Definitions
- 6.02 Purpose of Standard Rules
- 6.03 Privacy Standards
- 6.04 Custodian; Designation; Duties and Responsibilities; Fees
- 6.05 Notice and Report to the Public Employee Retirement Administration Commission
- 6.06 Access to Personal Data in Retirement Files by the Public Employee Retirement Administration Commission, Retirement Boards, Medical Panel Physicians and the Office of the Attorney General
- 6.07 Access to Personal Data in Retirement Files by Members
- 6.08 Access to Retirement Files by Employers
- 6.09 Access to Retirement Files by Legal Process
- 6.10 Access to Personal Data in Retirement Files by the General Public
- 6.11 Access to Public Records; Promptness of Access; Requests for Public Records
- 6.12 Records of Retirement Board Meetings
- 6.13 Advisory Opinions
- 6.14 Objections and Administrative Appeals

840 CMR 6.00 is the standard rule for disclosure of information promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, §§ 50(a) and 50(n). Except as otherwise provided by the Commission, by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 6.00 shall govern the release of all records in the custody of any retirement board in the Commonwealth. The release of records in the custody of retirement boards subject to M.G.L. c. 66A shall be governed by M.G.L. c. 66A, 801 CMR 2.00 and 3.00 and 840 CMR 6.00.

### 6.01

#### Definitions

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 6.00 shall have the meanings assigned them by M.G.L. c. 4, § 7(26), M.G.L. c. 30A, §§ 11A and 11A½, M.G.L. c. 32, M.G.L. c. 34, §§ 9F and 9G, M.G.L. c. 39, §§ 23A and 23B, and M.G.L. c. 66A, § 1, and if no meaning is so assigned, they shall have their ordinary meanings.

## 6.02

### Purpose of Standard Rules

The purpose of 840 CMR 6.00 is to establish uniform standards and procedures to be applied by retirement boards in maintaining and disclosing records, particularly records containing personal data. A retirement board shall provide access to public records as required by M.G.L. c. 66, § 10 and shall protect personal data which it holds as required by M.G.L. c. 66A and 840 CMR 6.00.

## 6.03

### Privacy-Standards

(1) Without the written consent of the data subject or his or her authorized representative, no retirement board shall disclose to any person outside of the board any personal information contained in a personnel or medical file which may be identified or associated with the data subject or other materials or data pertaining to a specifically named individual if such disclosure may constitute an unwarranted invasion of personal privacy unless such disclosure is required by Federal or State statute or regulation.

(2) In determining whether personal information other than that contained in a personnel or medical file is a public record, a retirement board shall balance the seriousness of any invasion of privacy which release of the record may cause against the public's right to know about the contents of the record, and shall consider whether the public interest in obtaining the information substantially outweighs the seriousness of any potential invasion of privacy.

(3) In general, the determination whether release of materials or data may constitute an unwarranted invasion of personal privacy must be made on a case by case basis. However, the board shall not release records containing intimate details of a highly personal nature, such as information related to alcohol or drug problems, mental health problems, or the like, without the written consent of the data subject or an order of a court of competent jurisdiction.

(4) In making the determination whether the privacy exemption to the public records law limits disclosure of information a retirement board shall observe the following principles:

(a) Information relating to a member's name, address, and type of retirement (e.g. superannuation, ordinary disability, accidental disability, veteran status, etc.) is generally a public record;

(b) Medical files or information relating to a specifically named individual, including, the medical reason for a disability retirement, shall not be considered a public record;

(c) Other material or data relating to a specifically named individual is generally not a public record if the information contained in the record relates to intimate details of a highly personal nature.

(5) Any record pertaining to meetings of a retirement board including records pertaining to the financial operation of the board shall be presumed to be a public record unless the record is exempt from disclosure by 840 CMR 6.12.

(6) If a record contains both public and non-public information, the retirement board shall release as a public record any segregable portion of such record which is an independent public record.

(7) Retirement board studies and reports based upon personal data held by the board may be disclosed if all personal identifiers have been removed and no data subject can otherwise be identified by the nature, content or context of such studies or reports.

## 6.04

### Custodian; Designation; Duties and Responsibilities; Fees

#### (1) **Designation**

Each retirement board shall designate a person to serve as Custodian of all records which the retirement board holds.

#### (2) **Duties-and-Responsibilities**

The Custodian shall:

- (a) maintain custody of and control over all records held by the retirement board;
- (b) take all reasonable precautions to protect the records from fire, theft, flood, natural disaster, unauthorized removal or other security hazard;
- (c) inform members and staff of the retirement board of the provisions of 840 CMR 6.00;
- (d) insure that the number of duplicate retirement files is maintained at an absolute minimum and that any such duplicate files are maintained consistent with the requirements of 840 CMR 6.00;
- (e) develop and implement a plan for the expungement of obsolete records with approval, where applicable, of the Records Conservation Board established by M.G.L. c. 30, § 42, and the Supervisor of Public Records pursuant to M.G.L. c. 66, § 8;
- (f) maintain to the maximum extent feasible a complete and accurate record, which shall be deemed part of the data to which it relates for all purposes under 840 CMR

6.00, of every access to or use of a member's retirement file, including the identity of all persons and organizations to whom such access has been granted, except that no record need be maintained of any such access to or use by members or staff of the retirement board, medical panel members, or representatives of the Public Employee Retirement Administration Commission;

(g) make the initial determination as to whether any record requested is a public record and as to whether access to the record requested is mandated by M.G.L. c. 4, § 7(26), or by other applicable law or regulation;

(h) assess and collect fees as provided in 840 CMR 6.04(3);

(i) receive objections as provided in 840 CMR 6.14;

(j) answer questions; and

(k) make available on request copies of M.G.L. c. 4, § 7(26), M.G.L. c. 66, § 10 (the Massachusetts Freedom of Information Act), applicable provisions of M.G.L. c. 66A (the Massachusetts Fair Information Practices Act), and 801 CMR 2.00 and 3.00, applicable provisions of M.G.L. c. 30A, §§ 11A and 11A½ (the Open Meeting Law governing state agencies), M.G.L. c. 34, §§ 9F and 9G (the Open Meeting Law governing county agencies), and M.G.L. c. 39, §§ 23A and 23B (the Open Meeting Law governing municipal agencies) and 840 CMR 6.00.

### (3) Fees

The Custodian may charge a reasonable fee for copies of any record consistent with the fee schedule issued by the Supervisor of Public Records pursuant to 950 CMR 32.02(5). A fee reasonably related to cost may also be charged for making a search for the requested record provided that no charge may be made for a search requiring less than 20 minutes to complete. The retirement board may waive the reproduction fee or the search fee if, in its judgment, such waiver would be in the public interest.

## 6.05

### Notice and Report to the Public Employee Retirement Administration Commission

The retirement board shall upon any establishment, termination, or change in character of a retirement file system submit a report to the Public Employee Retirement Administration Commission regarding the retirement file system it operates. Such report shall include, but not necessarily be limited to the following information:

(1) The name of the system and the name and address of the Retirement Board;

(2) The nature and purpose of the system;

- (3) The identification of the types, categories, uses and sources of data held in the system;
- (4) The approximate number of individuals about whom data are held in the system;
- (5) Whether and to what extent the data are held in computerized form;
- (6) A description of each person and organization having access to the system;
- (7) A description of the policies and practices of the board with regard to data maintenance, retention, and disposal;
- (8) A description of the manner in which any individual, who believes that data about him are held in the system, may have a search made, and, if such data are so held, may inspect, copy, and object to it as provided in 840 CMR 6.00;
- (9) A description of other actions taken to comply with 840 CMR 6.00; and
- (10) A statement that this report is available to the public upon request.

## 6.06

### Access to Personal Data in Retirement Files by the Public Employee Retirement Administration Commission, Retirement Boards, Medical Panel Physicians and the Office of the Attorney General

- (1) The Commission, staff and representatives of the Public Employee Retirement Administration Commission, members and staff of the retirement board, and medical panel physicians shall have access to personal data in retirement files to the extent that their duties require such access.
- (2) Whenever a data subject files or threatens to file a complaint against the Commonwealth, including executive offices, agencies, or departments, or against any employee or officer of the Commonwealth, concerning a matter within the scope of the office or employment with the Commonwealth, any personal data concerning the data subject that is in the possession of the retirement board or the Public Employee Retirement Administration Commission that is relevant to the determination of the issues in dispute shall be provided to the Office of the Attorney General upon request. Such requests must be in writing and contain a clear description of the data sought, the reason for the request and the intended use of the data. In supplying such data, the retirement board or the Commission must redact any data concerning non-parties. Any personal data indicating a violation of law may be referred to the Office of the Attorney General for investigation and enforcement. Any assistant attorney general may further disclose the personal data to the extent deemed necessary to defend

the Commonwealth, officer or employee effectively against the data subject's claim. No data may be released where prohibited by statute.

## 6.07

### Access to Personal Data in Retirement Files by Members

#### (1) **Request for Notification of Holding**

The Custodian, upon request of a member or his or her authorized representative, shall inform the member in writing, within 20 days of receipt of a request, whether the retirement board holds, or has held within the previous 24 months, any personal data concerning the member.

#### (2) **Access to Personal Data**

A member or his or her authorized representative shall be granted access to all personal data in the member's retirement file except where prohibited by law or judicial order and except as provided in 840 CMR 6.07(3). In making any disclosure of personal data to a member pursuant to 840 CMR 6.07, the Custodian may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the member is not. The Custodian shall not rely on any exception contained in M.G.L. c. 4, § 7(26) to withhold from a member personal data otherwise accessible to him or her under 840 CMR 6.00.

#### (3) **Investigative Data**

Except as specifically authorized by the Custodian with the approval of the retirement board, a member or his or her authorized representative shall not be granted access to any information in the member's retirement file which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. Such information may be withheld for the time it takes the investigatory agency to complete its investigation and commence an administrative or judicial proceeding on its basis. 840 CMR 6.07(3) shall not affect any rights to access the member may have under administrative or judicial discovery procedures.

#### (4) **Notification of Denial of Access**

If access to personal data is denied, the Custodian shall notify the member in writing of such denial, shall state the reasons for such denial, and shall describe the right to appeal provided in 840 CMR 6.14(2).

## 6.08

### Access to Retirement Files by Employers

- (1) An employer may be granted access to personal data in a member's retirement file bearing on the member's present, former or prospective employment by the employer.
- (2) An employer desiring such access shall make a request on the appropriate form stipulating that the employer shall not disseminate any personal data received except as permitted by M.G.L. c. 66A, where applicable, or 840 CMR 6.00.
- (3) If access to personal data is denied, the Custodian shall notify the employer in writing of such denial, the reasons therefor, and the right to appeal as provided in 840 CMR 6.14(2).

## 6.09

### Access to Retirement Files by Legal Process

Unless otherwise prohibited by law or judicial order, upon receipt of a subpoena duces tecum, or other order of a court or administrative agency of competent jurisdiction directing the retirement board to produce personal data in a member's retirement file, the Custodian shall notify the member of the demand no later than the next business day following the day on which the subpoena or other document is served and shall not produce any records in response to the demand unless the member has been notified in reasonable time to seek to have the process quashed. If the member is properly notified and if the process is not quashed, the Custodian shall produce a copy of the requested records as ordered by the Court or agency, and shall advise the Court or agency of the requirements of 840 CMR 6.00.

## 6.10

### Access to Personal Data in Retirement Files by the General Public

- (1) Any person may request access to public records in a member's retirement file pursuant to the procedures provided in 840 CMR 6.11 and M.G.L. c. 66, § 10.
- (2) If the custodian determines that data requested are not a public record, he or she shall deny access unless such dissemination of the record is:
  - (a) authorized by a statute or regulation consistent with the purposes of M.G.L. c. 66A or 840 CMR 6.00;
  - (b) requested by an employer consenting to observe the provisions of M.G.L. c. 66A applicable to holders of personal data as provided in 840 CMR 6.08;

(c) approved in writing by the member, and the member has a right to access to the requested records by law or 840 CMR 6.00; or

(d) requested by a physician treating a data subject during a medical or psychiatric emergency which precludes the data subject from approving disclosure; provided that notice of disclosure shall be given to the data subject upon termination of the emergency.

(3) Any person seeking access to personal data that is not subject to release in a member's file pursuant to 840 CMR 6.10(1)(c) shall submit a written request to the Custodian stating the name of the member and specifying the information sought. Upon receipt of a request, the Custodian shall send a letter to the member describing these procedures, explaining that the member is under no legal obligation to consent to the release of the information, and enclosing the request. If the member consents in writing to the requested access, the custodian shall grant access as requested. If the member does not respond, or does not so consent, the Custodian shall deny access. The Custodian shall furnish the member, upon request, a copy of any personal data that has been disclosed.

## 6.11

### Access to Public Records; Promptness of Access; Requests for Public Records

#### (1) **Access to Public Records**

The Custodian shall, at reasonable times and without unreasonable delay, permit any public record under his or her custody to be inspected and examined by any person, under such supervision as may be appropriate, and shall furnish one copy thereof upon payment of a reasonable fee as set forth in 840 CMR 6.04(3). The Custodian shall also permit any person to search the public records of the retirement board in a reasonable manner that does not interfere with the normal functions of the board.

#### (2) **Promptness of Access**

The Custodian shall establish and maintain routine procedures for prompt production of public records to persons requesting them. The Custodian shall respond to every request for a public record within ten days and, if the request is granted, produce copies of the public records requested. If the request is denied, the Custodian shall inform the person requesting the record of the reasons for such denial in writing and the right to appeal provided in 840 CMR 6.14, M.G.L. c. 66, § 10(b), and 950 CMR 32.04.

#### (3) **Request for Public Records**

A person may request records either orally or in writing. A retirement board shall require a written request for records only when there is a substantial doubt as to whether the record requested is a public record, and shall not require such a written request merely to delay production. The Custodian shall provide forms for requesting records but any written request is sufficient as long as the record is adequately described therein. Any person seeking access

to a public record shall provide a reasonable description that enables the Custodian to identify and locate the record promptly. Superior knowledge of the contents of retirement board files on the part of the Custodian shall be used to facilitate rather than hinder compliance with requests for public records.

## 6.12 Records of Retirement Board Meeting

(1) The minutes and other records of each retirement board meeting shall be a public record and shall be available upon request as provided herein; provided, however, that the records of any executive session may remain secret as long as disclosure may defeat the lawful purposes for which the session was closed, but no longer.

(2) The retirement board shall periodically review its records of executive sessions to determine whether such records must remain secret. When the retirement board decides that a previously secret executive session record or portion thereof need no longer remain secret, it shall note such decision in the minutes of the retirement board meeting at which such decision is made.

## 6.13 Advisory Opinions

### **Supervisor of Public Records**

The Custodian or retirement board may seek an advisory opinion from the Supervisor of Public Records with respect to any question concerning the application of M.G.L. c. 4, § 7(26) or of M.G.L. c. 66, by sending a written request to the Supervisor of Public Records, Office of the State Secretary, One Ashburton Place, Room 1701, Boston, MA 02108, as provided in 950 CMR 32.03.

## 6.14 Objections and Administrative Appeals

### **(1) Objection to Custodian**

Any member or his or her authorized representative who objects to the collection, maintenance, dissemination, use, accuracy, completeness, type of, or denial of access to, personal data in his or her retirement file, may file an objection thereto with the Custodian. Upon receipt of such objection, the Custodian shall investigate the validity of the objection. If, after the investigation, the objection is found to be meritorious, the Custodian shall correct the contents of the data or the methods for holding or the use of such data. If the objection is found to lack merit, the Custodian shall provide the member the opportunity to have a statement reflecting his or her views recorded and disseminated with the data in question. In either event, the Custodian shall notify the member in writing of his or her decision within 30 days following receipt of the objection.

**(2) Appeals to the Supervisor of Public Records**

In the event any Custodian denies access to a record claimed to be a public record, the person making the request may appeal the matter to the Supervisor of Public Records as provided by M.G.L. c. 66, § 10(b) and 950 CMR 32.04.

**(3) Judicial Relief**

The administrative remedies provided in 840 CMR 6.14 shall not limit administrative or judicial remedies provided in M.G.L. c. 66, § 10, M.G.L. c. 214, § 3B, or any other statute or regulation.

## Regulatory Authority

840 CMR 6.00: M.G.L. c. 7, § 50; M.G.L. c. 42, § 21.

# 840 CMR 7.00

## Standard Rules for Elections

### Section

- 7.01 General Provisions
- 7.02 Election Officer; Appeals to Board
- 7.03 Notice of Elections
- 7.04 Nominations
- 7.05 Election by Declaration
- 7.06 Official Election Ballots
- 7.07 Elections Conducted by Mail or at Polling Place
- 7.08 Absentee Ballots
- 7.09 Tabulation of Ballots
- 7.10 Election Results
- 7.11 Preservation of Ballots
- 7.12 Simultaneous Elections
- 7.13 Terms

### 7.01

#### General Provisions

(1) 840 CMR 7.00 is the standard rule for elections promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, § 21. Except for elections in county retirement systems, which shall be governed by the provisions of M.G.L. c. 32, §§ 20(3)(b) and 20(3)(h), and in regional retirement systems which shall be governed by the provisions of M.G.L. c. 34B, § 19(a), except as otherwise provided by the Commission, by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 7.00 shall govern all elections of elected board members held under the supervision of a retirement board or under the supervision of the Pension Reserve Investment Management Board.

(2) Unless a different meaning is plainly required by the context, the term “member”, as used in 840 CMR 7.00, means member in service where the elected member is elected from members in service and means member in or retired from service where the elected member is elected from members in or retired from service.

(3) The elected retirement board member shall be elected by the members of the retirement system from among their number. One elected PRIM Board member shall be an active or retired member of the State Retirement System and shall be elected by the members in or retired from the State Retirement System. The other elected PRIM Board member shall be an active or retired member of the Teachers’ Retirement System and shall be elected by the

members in or retired from the Teachers' Retirement System. Members inactive, as defined by M.G.L. c. 32, § 3(1)(a)(ii), shall have the right to vote in board elections.

(4) If otherwise eligible and allowed by law, board staff may be elected to a board.

## 7.02 Election Officer; Appeals to Board

The board shall designate an Election Officer, who may be a member of the board, who shall assist the board in supervising the election and shall determine all matters relating to the election. Any person aggrieved by a determination of an Election Officer may appeal to the board. The board may promulgate supplementary rules governing the election which shall take effect as approved by the Commission pursuant to 840 CMR 14.02.

## 7.03 Notice of Elections

The board shall provide reasonable notice of the election not less than 90 days prior to the date of the election. Notice shall state the time, place and manner of the election and shall describe nomination and election procedures including, if the election is conducted at a polling place, procedures for voting by absentee ballot.

- (1) Notice shall be mailed to each member of the appropriate system, or
- (2) Notice shall be mailed to each retired member of the appropriate system and be posted in at least three appropriate public locations:
  - (a) within the jurisdiction of the system, or
  - (b) where a system includes more than one governmental unit, within the jurisdiction of each governmental unit.

## 7.04 Nominations

Any member of the appropriate system may qualify as a candidate by filing with the board a nomination paper or papers, containing the signatures and addresses of at least 20 members of the system. Nomination papers, in blank, shall be made available to candidates at least 90 days prior to the date of the election. The nomination paper or papers, containing the necessary number of qualified signatures and addresses shall be filed no later than 45 days prior to the date of the election. If the board determines that a candidate has filed nomination papers containing less than the required number of qualified signatures, the board shall declare the nomination papers invalid and shall notify the candidate of its determination.

## 7.05

### Election by Declaration

If the board determines that only one candidate has been nominated, the board shall declare said candidate to be the elected member of the board, no election shall be held, and said candidate shall take office and serve in all respects as though he or she had been elected by election.

## 7.06

### Official Election Ballot

If the board determines that more than one candidate has been nominated, the board shall immediately prepare an official election ballot. Qualified candidates shall be listed on the official ballot in an order determined by a random drawing of the names of the candidates. If the incumbent elected member is nominated, he or she shall be identified as the incumbent on the official ballot. The official ballot shall state the length of the term for which the candidates are running.

## 7.07

### Elections Conducted by Mail or at a Polling Place

Elections shall be conducted either entirely by mail or at a polling place open for not less than ten hours, the time and place to be determined by the board. In elections conducted at a polling place, members shall cast their votes on the official ballot in person at the polling place except as provided in 840 CMR 7.08.

## 7.08

### Absentee Ballots

In elections conducted at a polling place members retired from service may vote by absentee ballot and an absentee ballot shall be mailed to each such member with notice of the election pursuant to 840 CMR 7.03. A member in service may, upon timely request, vote by absentee ballot only if he or she:

- (a) will be absent from the city or town where the polling place is located during the hours that it will be open;
- (b) will be unable to cast his or her vote in person on the day of the election for reasons of religious belief; or
- (c) will be unable to cast his or her vote in person at the polling place by reason of temporary physical disability.

Requests for absentee ballots shall be in writing and shall be filed no later than the day before the election or such earlier time provided by supplementary rules of the board approved by the Commission pursuant to 840 CMR 14.02. Absentee ballots shall be counted only if received by the board no later than the time fixed for the closing of the polls on the day of the election.

## 7.09 Tabulation of Ballots

Ballots shall be tabulated only by persons designated by the board under the direction of the Election Officer. The board shall notify each candidate of the time and location of the tabulation of the ballots and shall permit all candidates, or their representatives, to be present at the tabulation.

## 7.10 Election Results

The board shall notify each candidate, in writing, and shall give public notice of the results of the election within seven days after the election.

## 7.11 Preservation of Ballots

All ballots received by the board, including those determined to be invalid, shall be preserved by the board for 60 days.

## 7.12 Simultaneous Elections

Boards may hold a simultaneous election for the two elected members if the term of each elected member has expired or if both elected positions are vacant and if the two terms are equal. The board shall provide two separate ballots.

## 7.13 Terms

The terms of the elected members of the board shall be for not more than three years. The elected members shall serve until the qualification of their respective successors. In the event of a vacancy, a new election shall be held to fill a vacancy as soon as is practical and the member elected shall serve for either the unexpired portion of the vacant term or for a three year term.

## Regulatory Authority

840 CMR 7.00: M.G.L. c. 7, § 50; M.G.L. c. 32, § 21.

# 840 CMR 8.00

## Applicability of \$30,000 Salary Cap

### Section

- 8.01 Definitions
- 8.02 Applicability of \$30,000 cap
- 8.03 Additional Two Percent Contribution
- 8.04 Other Contributions
- 8.05 Effect of Cap on Retirement Allowance

### 8.01

#### Definitions

As used in 840 CMR 8.00, unless a different meaning is plainly required by the context, the following terms shall have the following meanings:

**Capped system**, any retirement system other than an uncapped system

**Non-section 50 restricted service**, any service other than St. 1978, c. 367, § 50 restricted service.

**Section 50 restricted service**, service by an employee to whom the \$30,000 cap applies in a system that remains a capped system.

**\$30,000 cap**, The maximum salary upon which a retirement allowance may be based pursuant to St. 1978, c. 367, § 50.

**Uncapped system**, the state employees' and the state teachers' retirement systems and any other system that:

- (a) accepts the provisions of M.G.L. c. 32, § 22(1)(b½), or
- (b) accepts an annual pension funding grant pursuant to M.G.L. c. 32, § 22D.

## 8.02

### Applicability of the \$30,000 Cap

(1) St. 1987, c. 697, § 64 makes the \$30,000 cap inapplicable to members of the state employees' and teachers' retirement systems and members of any system that:

(a) accepts the provisions of M.G.L. c. 32, § 22(1)(b½), or

(b) accepts an annual pension funding grant pursuant to M.G.L. c. 32, § 22D  
The \$30,000 cap is, in effect, repealed for members of these uncapped systems.

(2) The state employees' and teachers' retirement systems became uncapped as of January 1, 1988. Other systems become uncapped effective upon filing with the Commissioner a certificate of acceptance pursuant to 840 CMR 8.02(1)(a) or upon a vote to accept a grant pursuant to 840 CMR 8.02(1)(b), whichever occurs first.

(3) The \$30,000 cap remains applicable to those members of capped systems who became members on or after January 1, 1979. This includes:

(a) Members who were employed prior to January 1, 1979 but became members on or after January 1, 1979. Persons who were employed prior to January 1, 1979 and were not permitted membership by administrative oversight, or through no fault on the part of the member, are not subject to the \$30,000 cap.

(b) Individuals who were members prior to January 1, 1979 but left employment taking a return of accumulated deductions and then returned to employment and become members after January 1, 1979, whether or not previous service was repurchased. Persons who become members prior to January 1, 1979 and thereafter maintained membership, active or inactive, are not subject to the \$30,000 cap.

## 8.03

### Additional Two Percent Contribution

Effective on the date that a system becomes uncapped, for each member of the system to whom the \$30,000 cap had applied an additional two percent of that portion of regular compensation in excess of an annualized rate of \$30,000 shall be withheld each payday. For such members paid weekly, for example, two percent shall be withheld from all regular compensation in excess of \$576.92 per week.

## 8.04

### Other Contributions

(1) In the case of systems (other than the state employees' and teachers' systems) that become uncapped on or before July 1, 1988, for each member of the system to whom the

\$30,000 cap had applied an amount shall be withheld from that portion of regular compensation in excess of an annualized rate of \$30,000, in such installments as the retirement board shall direct, equal to the additional amount that would have been withheld pursuant to 840 CMR 8.03 between January 1, 1988 and the date the system becomes uncapped.

(2) In the case of systems that become uncapped after July 1, 1988 contributions pursuant to 840 CMR 8.04(1) shall not be required.

## 8.05

### Effect of Cap on Retirement Allowance

(1) If upon retirement a member to whom the \$30,000 cap applied has service in a capped system, and no service in an uncapped system, the maximum salary upon which the retirement allowance may be based is \$30,000 whether the member is retired for superannuation or for ordinary or accidental disability. The amount of regular compensation to be used in calculating the retirement allowance of such members shall not exceed \$30,000.

(2) If upon retirement a member to whom the \$30,000 cap applied has service in both a capped system and an uncapped system, the retirement allowance shall be based upon the number of years of section 50 restricted service and the number of years of non-section 50 restricted service. For this purpose, all service of a member in a system that remains a capped system at the time of retirement shall be included in section 50 restricted service, regardless of the member's actual rate of regular compensation, if the \$30,000 cap was applicable to the member at the time of the service. All service of a member in a system that is uncapped at the time of retirement shall be included in non-section 50 restricted service. The retirement allowance of any such member shall be the sum of the allowance calculated based upon the years of section 50 restricted service and the allowance calculated based upon the years of non-section 50 restricted service.

(3) If the retirement allowance of a member, or eligible beneficiary of a member, is affected by service in a system that remained capped at the time of retirement and the system later becomes uncapped, the retirement allowance shall be recalculated as of the date the system becomes uncapped. Any service in a system that has become uncapped since the time of retirement shall be included in non-section 50 restricted service for purposes of this recalculation. No member or beneficiary shall be required to make any additional contributions as a condition of such recalculation.

## Regulatory Authority

840 CMR 8.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 9.00

## Approval of Retirement Board Decisions

### Section

9.01 Approval Required; Exceptions

9.02 Notice to Commissioner

9.03 Benefit Calculations

### 9.01

#### Approval Required; Exceptions

(1) No decision to grant an application for retirement shall be sent to a member or beneficiary unless the Public Employee Retirement Administration Commission approves the decision pursuant to M.G.L. c. 32, § 21 or no action is taken by the Commission:

(a) within 30 days of the date the Commission is notified of a decision granting an application for disability retirement; or

(b) within 90 days of the date the Commission is notified of a decision granting any other application for retirement.

(2) In the event the Commission takes no action on a decision granting an application for retirement for superannuation within 90 days of notice of the decision, the board may, pursuant to M.G.L. c. 32, § 98 or 99 request the treasurer to make advance payments to the member as determined by the board subject to the final determination by the Commission. In the event a member receives an amount in excess of the sum later approved by the Commission, the member shall refund the excess or the board may deduct the excess from the member's future monthly payments.

### 9.02

#### Notice to the Commission

Notice to the Commission of a decision granting an application for retirement shall include a copy of the decision and all documentary evidence in the record that may be of assistance to the Commission including, without limitation, the following:

(1) If the application is for superannuation retirement:

(a) the superannuation retirement allowance form;

- (b) the superannuation calculation form; and

- (c) a copy of the member's deduction cards.

(2) If the application is for disability retirement:

- (a) the transmittal to the Commission;

- (b) all documents and information described in 840 CMR 10.13(1)(a)1.;

- (c) the disability retirement calculation form(s); and

- (d) a copy of the member's deduction cards.

(3) If the application is for accidental death benefits:

- (a) the transmittal to the Commission;

- (b) the accidental death calculation form;

- (c) a statement of the facts found by the retirement board;

- (d) all descriptions of the accident;

- (e) all descriptions of the member's duties;

- (f) all documents prepared by the beneficiary in connection with the application;

- (g) all documents prepared by the employer in connection with the application;

- (h) a copy of the member's death certificate; and

- (i) any available medical evidence, including the original medical records and any medical autopsy or evaluation reports of physicians employed by the board to make an independent judgment based on available medical information.

(4) If the application is for veteran's benefits:

- (a) the veteran's retirement allowance form;

- (b) all documents and information establishing the applicant's status as a veteran; and

- (c) if the application seeks non-contributory retirement under M.G.L. c. 32, §§ 56 and 60, all documents and information establishing whether the applicant's employment included any work for pay on or before June 30, 1939.

## 9.03

### Benefit Calculations

- (1) Except as provided by 840 CMR 9.03(2), all benefit calculations for retirement allowances granted under the provisions of M.G.L. c. 32 shall be forwarded to the Commission for approval in accordance with 840 CMR 9.02.
- (2) Any retirement board may perform benefit calculations on an automated system approved by the Commission. Except as provided by 840 CMR 9.03(8), individual benefit calculations performed on an automated system approved for performing such calculations shall be considered approved and need not be forwarded to the Commission for approval.
- (3) Any board may apply for approval of an automated benefit calculation system by submitting a letter describing the system together with the documentation for all system computer programs, a copy of system procedures and samples of all categories of calculations to be performed on the system. Upon receipt of a request for approval of an automated benefit calculation system, the Commission shall inform the retirement board of the protocol necessary to approve such system. No automated benefit calculation system shall be considered approved unless the board has performed the established protocol. No change shall be made in an approved automated system without the approval of the Commission.
- (4) Automated benefit calculation systems, and changes in approved systems, will generally be approved if:
  - (a) System computer programs have the capability of performing benefit calculations and storing, retrieving and printing both detailed and summary information for all calculations performed including, for each calculation, the member's:
    - name;
    - social security number;
    - sex;
    - creditable service;
    - final average salary;
    - date of birth;
    - date of retirement;
    - retirement type and option;
    - group;
    - beneficiary information (name, birthdate and relationship);
    - veteran status;
    - retirement allowance amount;
    - pension amount;
    - annuity amount;
    - dependency allowance;
    - worker's compensation information (if any).

(b) System procedures, including training and support of system operators, are designed to minimize the risk of error and loss of data.

(c) System and non-system categories of benefit calculations are clearly identified and provision is made for submitting any non-system categories of calculations to the Commission in accordance with 840 CMR 9.03(1).

## Regulatory Authority

840 CMR 9.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 10.00

## Standard Rules for Disability Retirement

### Section

- 10.01 Definitions
- 10.02 Purpose of Standard Rules: Retirement Board Policy
- 10.03 Supplementary Rules: Approval by Commission
- 10.04 Standard for Decision, Findings of Fact
- 10.05 Proceedings; Parties; Representation; Record
- 10.06 Proceedings for Ordinary or Accidental Disability Retirement; Applications; Additional Information
- 10.07 Information to be Obtained From Member's Department Head or Employer
- 10.08 Medical Panel; Formation and Instructions to Panel
- 10.09 Investigation of Facts; Denial of Certain Applications; Appeal
- 10.10 Examination by Medical Panel
- 10.11 Notice of Medical Panel's Findings; Further Examination by Medical Panel; Denial of Application; When Hearing Shall be Held by Retirement Board
- 10.12 Hearing by Retirement Board
- 10.13 Decision
- 10.14 Annual Statement of Earnings; Definition of Earnings From Earned Income; Refunds and Modifications Based on Earnings Information
- 10.15 Examination of a Member Previously Retired for Disability
- 10.16 Modification of Retirement Allowance and Fair Amount of Outside Earnings and Potential Earnings Pursuant to M.G.L. c. 32, § 8(3)
- 10.17 Evaluation For Rehabilitation Pursuant to M.G.L. c. 32, § 8(1)(a)
- 10.18 Rehabilitation Pursuant to M.G.L. c. 32, § 8
- 10.19 Rehabilitation Pursuant to M.G.L. c. 32, § 21
- 10.20 Essential Duties:
- 10.21 Failure to Provide Information or Documents, Violation of Regulations

840 CMR 10.00 is the standard rules for disability retirement promulgated by the Public Employee Retirement Administration Commission under the authority of M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 6 and 21. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission, 840 CMR 10.00 shall govern the following disability proceedings and procedures commenced by or before any retirement board after September 4, 1998.

- (1) Proceedings for ordinary and accidental disability retirement;
- (2) Proceedings for restoration to active service of members retired for disability;
- (3) Proceedings for modification of the retirement allowance of members retired for disability;
- (4) Procedures for medical examinations by medical panels on applications for disability retirement;
- (5) Procedures for re-examination, evaluation and rehabilitation of members retired for disability; and
- (6) Procedures for annual reporting of earnings and refunds under M.G.L. c. 32, § 91A by members retired for disability.

## 10.01

### Definitions

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 10.00 shall have the meanings assigned them by M.G.L. c. 32 and the Commission's regulations (840 CMR 1.00 et seq.) and if no meaning is so assigned, they shall have their ordinary meanings.

## 10.02

### Purpose of Standard Rules: Retirement Board Policy

The purpose of 840 CMR 10.00 is to establish uniform standards and procedures to be applied by retirement boards in ordinary and accidental disability retirement proceedings and procedures under M.G.L. c. 32, §§ 6, 7, 8 and 91A. It shall be the policy of the retirement board to make every reasonable effort to assist retirement system members to exercise all rights and obtain all benefits to which entitled and as authorized by the laws governing ordinary and accidental disability retirement, while protecting the retirement system and the public against claims and payments for disability retirement not authorized by law.

## 10.03

### Supplementary Rules: Approval by Commission

Any retirement board may promulgate supplementary rules for disability retirement but supplementary rules shall be consistent with 840 CMR 10.00, shall conform to the standard for decision set forth in 840 CMR 10.04 and shall take effect only as approved by the Commission pursuant to 840 CMR 14.02.

## 10.04

### Standard For Decision, Findings of Fact

(1) No retirement for ordinary or accidental disability shall be allowed unless the retirement board, based upon substantial evidence, makes findings of the facts upon which it relied in making its decision. The board must find that:

(a) The member is unable to perform the essential duties of his position; and

(b) The inability is likely to be permanent; and

(c) If the application is for accidental disability retirement, that the incapacity is the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of the member's duties at some definite place and some definite time without serious and willful misconduct on the member's part; and

(d) The member should be retired.

(2) In making the finding required by 840 CMR 10.04(1)(b) the retirement board shall consider, but not be limited to, the following factors:

(a) Whether the nature of the condition or injury is such that it can be expected to improve over a reasonable period of time;

(b) Whether the nature of the condition or injury is such that it could be expected to improve if the member were willing to undergo reasonable medical treatment or rehabilitation.

(3) In making the finding required by 840 CMR 10.04(1)(c) the retirement board shall apply the following presumptions:

(a) The retirement board shall presume that any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a member as described in M.G.L. c. 32, § 94 was suffered in the line of duty unless the contrary is shown by competent evidence.

(b) The retirement board shall presume that any condition of impairment of health caused by any disease of the lungs or respiratory tract, resulting in total disability or death to a member described in M.G.L. c. 32, § 94A was suffered in the line of duty, as a result of the inhalation of noxious fumes or poisonous gases, unless the contrary is shown by competent evidence.

(c) The retirement board shall presume that any condition of cancer affecting the skin or central nervous system, lymphatic, digestive, hematological, urinary, skeletal, oral or prostate systems, or lung or respiratory tract resulting in disability or death to a

member described in M.G.L. c. 32, § 94B was suffered in the line of duty unless it is shown by a preponderance of the evidence that non-service connected risk factors or non-service connected accidents or hazards undergone caused such incapacity.

(4) In making the finding required by 840 CMR 10.04(1)(c) the retirement board shall determine:

(a) Whether the presumptions set forth in 840 CMR 10.04(4)(a), (b) or (c) apply. If one of the presumptions applies to the application:

1. Whether the applicant successfully passed a physical examination upon entry to service or subsequent thereto which failed to reveal any evidence of such condition; and

2. Whether in the line of duty an applicant claiming the presumption contained in M.G.L. c. 32, § 94A responded to calls that would have involved the inhalation of or exposure to noxious fumes or poisonous gasses; and

3. Whether an applicant claiming the presumption contained in M.G.L. c. 32, § 94B served in a position that renders him or her eligible for the application of the presumption for at least five years and regularly responded to calls of fire during some portion of his or her service; and

4. Whether an applicant who left active service and is claiming the presumption contained in M.G.L. c. 32, § 94B first discovered the condition for which retirement is sought within five years of the last date that he or she actively served in a position described in M.G.L. c. 32, § 94B.

5. Whether any contrary evidence is sufficient to overcome the applicable presumption

(b) Whether other causal factors related to the member's physical or mental condition might have contributed to the disability claimed; and

(c) Whether any event other than the accident or hazard upon which the disability retirement is claimed might have contributed to the disability claimed.

## 10.05

### Proceedings; Parties; Representation; Record

#### (1) **Proceedings**

Disability proceedings include proceedings:

(a) For ordinary and accidental disability retirement of members in service;

- (b) For rehabilitation of members retired for disability;
- (c) For restoration to active service of members retired for disability; and
- (d) For modification of the retirement allowance of members retired for disability.

**(2) Parties**

Parties to a proceeding for ordinary or accidental disability retirement include the member who files the application. If the application is filed by a department head, the department head and the member who is the subject of the application shall be parties to the application. The party to a proceeding for modification of the retirement allowance of a member retired for disability is the member who is the subject of the proceeding. Parties to a proceeding for restoration to active service of a member retired for disability include the retired member, the member's employer and the head of any department identified by the employer as a department in which a vacancy exists to which the member may be restored under M.G.L. c. 32, § 8(2). Any person authorized by the retirement board to intervene or otherwise authorized by law to participate as a party in any proceeding shall be a party to that proceeding for purposes of 840 CMR 10.00.

**(3) Representation**

A party may appear in his or her own behalf or may be accompanied, represented and advised by an authorized representative who may be an attorney, legal guardian or other person authorized to represent the party in the proceedings. Any authorized representative shall file with the retirement board a written appearance which shall contain the representative's name, address and telephone number and the name of the party represented.

**(4) Record**

All evidence, whether documentary, testimonial, or in other form, offered by a party, the retirement board or any other person or entity in a disability proceeding and any issue, contention or argument raised with respect thereto, shall be included in the record of the proceeding.

## 10.06

### Proceedings for Ordinary or Accidental Disability Retirement; Applications; Additional Information

Proceedings for ordinary or accidental disability retirement may be brought by filing an application with the retirement board and with the employer. The application shall consist of the forms prescribed by 840 CMR 10.06, and shall be considered filed as of the date upon which the applicant completes and submits all the required forms to the retirement board. If the retirement board or the Commission believes any part of the application contains false, fictitious or fraudulent information, the board or the Commission shall notify the Attorney General or the appropriate district attorney.

**(1) Voluntary Retirement**

Any member in service who becomes totally and permanently unable to perform the essential duties of his or her job under the circumstances described in M.G.L. c. 32, § 6 (relating to ordinary disability) or § 7 (relating to accidental disability) may file an application for retirement. Every member-applicant shall also file:

- (a) A sworn statement indicating the members intent to retire;
- (b) A certificate from a licensed medical doctor;
- (c) A written statement authorizing release of information from the Federal Internal Revenue Service and the Department of Revenue relative to the annual gross earned income of the member in accordance with M.G.L. c. 32, §§ 6(1) and 7(1);
- (d) If the application is for accidental disability retirement, a sworn statement on Form 10-3 of the circumstances of the event or hazard undergone from which the personal injury was sustained upon which the disability retirement allowance is claimed;
- (e) The member's sworn statement of the member's duties of employment and the specific duties the member is now unable to perform as a result of the disability claimed;
- (f) A statement of the member's education and training, employment history and off-duty physical activities;
- (g) Authorizations on such other form as may be required by a person, institution or other agency having custody of the member's records, for release of medical or insurance records relating to the member as follows:
  - 1. records of the member's personal physicians and of the physician submitting the certificate described in 840 CMR 10.06(1)(b);
  - 2. records of all physicians or medical institutions examining or treating the member for the condition or personal injury upon which the application is based;
  - 3. records of all physical examinations performed within the five year period prior to the application or, if none are available for that period, the most recent;
  - 4. the member's workers' compensation records or, if applicable, any records in connection with application for or receipt of benefits pursuant to M.G.L. c, 41, § 111F;
  - 5. the member's medical records for the last five years;
  - 6. the accident or claim reports for the last five years of any insurer in connection with the personal injury sustained or the hazard undergone upon which the application is based;

(h) Authorizations permitting the physicians and medical institutions described in 840 CMR 10.06(1)(g)2. to further explain the records, treatment performed, or statement or prognosis.

## **(2) Involuntary Retirement**

The department head of any member in service who becomes totally and permanently unable to perform the essential duties of his or her job under the circumstances described in M.G.L. c. 32, § 6 (relating to ordinary disability) or § 7 (relating to accidental disability) may file an application for retirement on Form 10-2A. Department head applicants shall also file the statements by the department head or employer (Form 10-7) described in 840 CMR 10.07 and any medical information available to the department head or employer on which the application is based.

## **10.07**

### **Information to be Obtained From Member's Department Head or Employer**

Except as provided in 840 CMR 10.09, upon receipt of an application by a member for ordinary or accidental disability retirement, the retirement board shall request the statements required by 840 CMR 10.07 from the member's department head or employer. If the department head does not supervise the member, the department head's statement required by 840 CMR 10.07(1) shall be prepared by the member's direct supervisor and shall be counter-signed by the department head. The department head's statement shall be filed with the retirement board within 15 days of the date that the department head receives it.

#### **(1) Department Head's or Employer's Statement**

The retirement board shall request a statement from the member's department head or employer.

- (a) Providing a job description for the member's job and describing the member's duties and responsibilities;
- (b) Specifically identifying the essential duties of the position;
- (c) Describing any particular physical or mental requirements prescribed for the position;
- (d) Providing any medical records in the member's personnel file relating to the member's physical condition at the time of the member's employment or thereafter, which shall include any record of a pre-employment physical, any record relating to in-service physical examinations and all medical records relating to the disability claimed;
- (e) Providing any records of the member's education and training or of the member's qualifications;

- (f) Describing the specific duties the member cannot or may not be able to perform as a result of the disability or incapacity claimed;
- (g) Stating whether, in the department head's or employer's opinion the member may be able to perform the essential duties of the member's job.
- (h) If the application is for an accidental disability retirement, describing the event, accident or hazard undergone upon which the disability is being claimed, attaching copies of any and all injury or incident reports, and the statements of any witnesses to the injury or incident and providing any other information which may bear upon the cause of the member's claimed disability;
- (i) Stating whether the position is classified under civil service;
- (j) Stating whether the member's claimed disability is a result of any misconduct on the part of the member.

## 10.08

### Medical Panel, Formation and Instruction to Panel

- (1) Except as provided in 840 CMR 10.09, upon receiving an application for disability retirement, the retirement board shall petition the Commission to schedule a medical examination of the member by a regional medical panel.
- (2) If a medical panel is requested by the retirement board as a result of a decision of the Division of Administrative Law Appeals or the Contributory Retirement Appeal Board a copy of the decision must be forwarded to the Commission along with the request for the appointment of a medical panel request.
- (3) Such regional medical panel shall consist of three physicians who shall not be associated as defined in M.G.L. c. 32, § 6(3), who shall be selected for the purpose of examining the member whose retirement is under consideration and shall, so far as practicable, be skilled in the particular branch of medicine or surgery involved in the case. The Commission shall appoint one of the three physicians as Medical Panel Coordinator to facilitate panel proceedings.
- (4) Such regional medical panel shall meet within 60 days after appointment by the Commission to conduct its examination. If the panel fails to meet within 60 days, the Commission shall require the three physicians to conduct such examinations separately. If the Commission determines that it is unlikely the medical panel will be able to meet within 60 days, the Commission may, with the written consent of the member, authorize separate examinations.
- (5) Upon request of a member, the Commission shall schedule separate examinations as soon as practicable thereafter. A request for separate examinations may be filed at any time.

A request for separate examinations will not ordinarily be considered, however, if received by the Commission less than 48 hours prior to a scheduled examination by a regional medical panel unless the request is filed pursuant to the provisions of 840 CMR 10.10(5). The Commission shall so far as practicable schedule separate examinations with the same three physicians who were appointed to the regional medical panel unless the request is filed pursuant to the provisions of 840 CMR 10.10(5).

(6) Upon designation of the regional medical panel, the retirement board shall send to each panel physician, prior to the examination, all information obtained pursuant to 840 CMR 10.09(1), and advise the panel of the availability and location of any other medical data or reports known to the retirement board. The retirement board shall also provide the medical panel with copies of all documents in the member's file that may be of assistance to the panel, including, without limitation, the following:

- (a) The statement of the member's physician;
- (b) The member's statement of duties;
- (c) The member's statement of background, qualifications and physical activities;
- (d) The department head's or employer's statement;
- (e) For accidental disability claims, the member's statement of circumstances of personal injury or hazard undergone;
- (f) For accidental disability claims, copies of any injury reports filed with the retirement board or the applicant's employer.

(7) The medical panel shall not be provided with copies of the certificates and narratives of medical panels which previously examined the member or with copies of decisions by the Division of Administrative Law Appeals or the Contributory Retirement Appeal Board involving the member.

(8) The applicant shall be responsible for providing X-Rays, EKG tracings and other records that cannot readily be photocopied to the Medical Panel Coordinator designated by the Commission who shall forward such information to the other two panel physicians. The applicant is responsible for making the necessary arrangements for the return of these materials to the proper facility or treating physician.

## 10.09

### Investigation of Facts; Denial of Certain Applications; Appeal

(1) The retirement board shall obtain any pertinent information known to exist without regard to the five year time periods stated in 840 CMR 10.06(1)(g)3., 5. and 6., including any record listed in 840 CMR 10.06(1)(g) relating to an application for ordinary or accidental

disability retirement and shall conduct such investigation as may be necessary to determine the facts.

(2) At any stage of a proceeding on an ordinary or accidental disability retirement application the retirement board may terminate the proceeding and deny the application if it determines that the member cannot be retired as a matter of law.

(3) If the retirement board decides to deny an application under 840 CMR 10.09, notice of the decision, basis for the board's decision, and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(3).

## 10.10

### Examination by Medical Panel

#### (1) **Notice**

In proceedings for disability retirement the Commission shall give all parties at least 14 days notice of the medical panel examination. An applicant may waive his or her right to 14 days notice by filing a written waiver with the Commission. Examinations shall be held at a reasonably convenient time and place for all parties.

#### (2) **Examination**

A physical examination and/or psychiatric evaluation of the member shall be conducted by the regional medical panel. If fewer than three physicians are present at a regional medical panel examination, and the member consents in writing, the physician or physicians present shall conduct the examination and any physicians not present shall conduct a separate examination.

#### (3) **Medical Tests**

The medical panel may suggest any "non-invasive" medical test which the panel considers necessary to render an opinion of the member's medical condition. The Commission shall assume the cost of any non-invasive test suggested by the medical panel up to an amount that the Commission shall determine annually. This annual determination will be communicated to all retirement boards during the month of January. No test the cost of which exceeds the annual amount determined by the Commission shall be ordered or required by the medical panel without the advance approval of the Commission.

#### (4) **Representation**

At the election of the member and employer respectively, the member's physician and employer's physician, may be present and may answer questions from the panel during the decision making process of the panel. In the case of separate examinations, the member's physician and the employer's physician shall have the opportunity to attend each examination. Either physician may disagree with the findings of the panel or, in the case of separate examinations, with any of the three physicians and may so indicate by signing the panel certificate in the space provided and by filing a written statement with the Commission with-

in ten days following the examination. Neither physician shall otherwise participate in the decision making process of the panel.

**(5) Rescheduling of Examination**

If a member is unable to attend a scheduled medical panel examination, or in the case of single exams any one of the three separate examinations, the member shall notify the Commission and may request that the examination be rescheduled. The Commission will ordinarily grant requests for rescheduling only for extenuating circumstances such as death in the family or hospitalization or serious illness of the member, provided that appropriate documentation of such is provided to the Commission. If a request for rescheduling is denied by the Commission, and the applicant fails to appear at the originally scheduled examination, the retirement board may deny the application and notice of the decision and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(3).

**(6) Failure to Appear**

If a member fails to appear at a scheduled examination without having been granted a request for rescheduling by the Commission, the member shall reimburse the Commission for the costs of that examination before a new examination shall be scheduled. If the application is for involuntary retirement under the provisions of M.G.L. c. 32, § 16, the employer shall be responsible for reimbursement to the Commission if the employee fails to appear at a scheduled examination. Reimbursement may be waived if the Commission finds that there was just cause for the member's failure to appear.

**(7) Confidentiality**

Since the principal purpose of the examination is to discuss and evaluate the physical condition or mental health of the member, attendance at the examination shall be limited to the member and the medical panel physician(s), the employee's physician and the employer's physician. The member's attorney and the employer's attorney may attend the examination. The member may permit the presence of other individuals, provided that their presence will not disrupt the examination. No document received during the examination shall be made available to the public except as may be required by other laws and regulations applicable to such records.

**(8) Documents Submitted to the Medical Panel**

Any documents that are submitted to the medical panel by anyone other than the retirement board will be transmitted to the Commission by the panel. The Commission will provide copies of the documents to the retirement board.

**(9) Certification of Panel Findings**

The medical panel, or in the case of separate examinations each medical panel physician, shall report their findings and recommendations to the retirement board through the Commission on certificates supplied by the Commission within 60 days after completing their examinations. The panel or physician, as the case may be, shall forward the report to the Commission for approval for payment of medical panel services. Within five days of receiving a properly completed medical panel or physician report, the Commission shall forward the report to the retirement board. The medical panel physicians shall certify

whether the member is unable to perform the essential duties of his job, whether the inability is likely to be permanent and, if the application is for accidental disability, whether the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which the retirement is claimed. The physician designated by the Commission as Medical Panel Coordinator or, in the case of separate examinations, each medical panel physician, shall also file a narrative statement describing in detail the findings and recommendations of the report. The names and addresses of all persons attending the medical panel examination, a listing of all documents presented to the medical panel at the examination and all medical tests and/or X-Rays ordered by the medical panel shall be listed in the space provided on the Medical Panel Certificate.

## 10.11

### Notice of Medical Panel Findings; Further Examination by Medical Panel; Denial of Application; When Hearing Shall be held by the Retirement Board

(1) Within 30 days of receipt of a medical panel report by the retirement board or, in the case of separate examinations, 30 days of receipt of the last of the three separate reports, the retirement board shall notify the parties of the panel's findings, and provide the member with a copy of all certificates and documents completed by the medical panel physicians.

(2) If upon review of a medical panel report by the retirement board, or in the case of separate examinations, any individual report, the retirement board determines that additional information or further clarification is needed from the medical panel, the board shall request such information from the medical panel and shall provide a copy of such request to the Commission. At the request of the retirement board, the Commission shall assist the retirement board in obtaining whatever information is deemed necessary.

(3) If the medical panel findings preclude retirement for the disability claimed, the retirement board shall either deny the application or, if it determines that further examination by a medical panel may be warranted, the retirement board shall petition the Commission to schedule a new examination by a medical panel, stating the circumstances warranting a new examination. If the Commission grants a request for a new medical panel, the retirement board shall proceed as provided in 840 CMR 10.08(6). If the Commission declines to schedule a new examination, it shall so notify the retirement board and the retirement board shall deny the application. Notice of the decision and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(3).

(4) If the medical panel findings permit retirement for the disability claimed, the retirement board shall determine whether or not to approve the application. A hearing may be held on any disability retirement application and shall be held upon request of the member. The retirement board shall hold a hearing on any involuntary disability retirement application where a hearing is timely requested by the member. If a hearing is held notice shall be given and the hearing shall be held as provided in 840 CMR 10.12.

## 10.12

### Hearing by Retirement Board

#### (1) **Notice**

The retirement board shall give all parties at least 30 days notice of the time and place for the hearing and of the issues involved in the hearing. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statements, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

#### (2) **Discovery**

Any party and any authorized representative shall, at any time after a hearing has been requested or ordered and after reasonable notice to the retirement board, be permitted to examine and copy or photocopy, at cost and during normal business hours, any document in the case file pertaining to the member's file or the record of the hearing. All other discovery shall be at the discretion of the retirement board. A request for discovery may be made by any party at any time after a hearing has been requested or ordered.

#### (3) **Conduct of Hearing**

Hearings shall be conducted in an informal manner that affords all parties an opportunity to present all information and argument relevant to the proceeding.

##### (a) **Presiding Officer**

The chairperson of the retirement board, any other member of the board acting as chairperson, or any individual designated by the board, shall be the presiding officer and shall assure parties the right to call and question witnesses and introduce exhibits, and to present argument, relevant to the proceeding. The presiding officer shall assure an orderly presentation of the evidence and argument and that a record is made of the hearing.

##### (b) **Continuances**

The presiding officer may change the date, time or place of the hearing on his own motion or on the request of any party, upon due notice to all other parties, and may continue the hearing to a subsequent date to permit any party to present additional evidence, witnesses or other materials. At any time prior to decision, the presiding officer may reconvene the hearing for any purpose upon ten days written notice to all parties, stating therein the purposes for reconvening, and the date, time and place of the reconvened hearing.

##### (c) **Oaths; Rulings; Briefs**

The presiding officer shall administer the oath or affirmation to witnesses, shall rule upon the admissibility of evidence and upon any requests for rulings, and may order that written briefs be submitted by the parties.

(d) **The Record**

All proceedings in connection with the hearing shall be recorded by electronic or stenographic means and such record shall be maintained as part of the hearing record. Transcripts or duplicate tapes of the proceedings shall be supplied to any party, upon request, at that party's expense. At the discretion of the presiding officer, any party may be permitted to maintain a record so long as this does not interfere with the conduct of the proceedings. All documents and other evidence received shall also become part of the record.

(e) **Executive Session**

Since the principal purpose of a hearing on a disability retirement application is to discuss and evaluate the physical condition or mental health of the member, the hearing shall be held in executive session unless the member requests that the meeting be open. In such executive session only the retirement board, the secretary and the retirement board's counsel, the parties and their authorized representatives and such other persons as the presiding officer shall deem necessary for the conduct of the hearing shall be permitted to be present. No executive session shall be held until the retirement board has first convened in open session for which notice has been given, a majority of the members of the board have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has stated the purpose for an executive session, and has stated before the executive session if the board will reconvene after the executive session. The records of the hearing in executive session shall not be made available to the public except in accordance with the board's regulations on privacy and confidentiality and such other laws or regulations as may be applicable to such records.

(f) **Evidence**

**1. General**

The retirement board need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence shall be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious evidence may be excluded.

**2. Testimony; Stipulations**

Witnesses shall testify under oath or affirmation and shall be available for questions by all parties. If a witness cannot, as a practical matter, be available in person the witness shall be available and testify by telephone conference call, or by any other reasonable means ordered by the presiding officer. Stipulations by the parties as to any fact or as to the testimony that would be given by an absent witness may be offered and received as evidence.

### **3. Documentary Evidence**

Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference in the discretion of the presiding officer.

### **4. Taking Notice of Facts**

The retirement board may take notice of any fact which may be judicially noticed by the courts, and any fact within the retirement board's specialized knowledge. Parties shall be notified and afforded an opportunity to contest any facts so noticed.

### **5. Evidence to be Part of Record**

All evidence, including any records, reports and documents of the retirement board, to be considered in making a decision shall be offered and made a part of the record of the proceeding and the record shall at all times be open for inspection by any party or authorized representative during business hours. The retirement board may, with notice to all parties, require any party to submit additional evidence for the record and shall afford parties an opportunity to submit rebuttal evidence.

## **(g) Subpoenas.**

### **1. Issuance**

The presiding officer shall, within five days of a written request of a party, issue a subpoena requiring the attendance and testimony of a witness or the production of any evidence including books, records, correspondence or documents relating to any matter in question at a hearing on a disability application.

### **2. Request to Vacate**

Any person subpoenaed may file a written request requesting the presiding officer to vacate or modify the subpoena.

### **3. Decision on Request to Vacate or Modify Subpoena**

The presiding officer shall notify all parties of the request to vacate or modify the subpoena and afford parties a reasonable time to respond. The presiding officer shall grant the request to vacate or modify the subpoena if the testimony or evidence subpoenaed does not relate with reasonable directness to any matter at issue in the proceeding or if the subpoena is otherwise unreasonable or oppressive.

(h) If any person fails to comply with a properly issued subpoena, the retirement board or the party requesting the issuance of the subpoena may petition the superior court for an order requiring compliance.

## 10.13

### Decision

In all disability proceedings the decision of the retirement board shall be based exclusively on the record of the hearing or, if there is no hearing, on the record of the proceeding. A written decision shall be made as soon as administratively feasible and copies of the decision shall be sent to all parties as provided in 840 CMR 10.13.

#### (1) **Proceedings for Disability Retirement**

In proceedings for disability retirement the retirement board shall determine whether the member is eligible for disability retirement under M.G.L. c. 32, §§ 6 or 7, or under another section of general or special law, and under the standard set forth in 840 CMR 10.04. In no event shall the decision be later than 180 days after the application for disability retirement is filed unless an extension is granted by the Commission under M.G.L. c. 32, § 6(4) or § 7(6).

##### (a) **Decision to Grant Application: Information to be Sent to Commission**

If the retirement board decides to grant an application for disability retirement, a copy of the decision shall be sent to the Commission on the appropriate form together with a statement of the facts found by the retirement board and all of the documentary evidence in the record that may be of assistance to the Commission including, without limitation, the following:

1. The certificate(s) of the medical panel, including any and all correspondence from the medical panel;
2. The certificate of the applicant's physician;
3. All descriptions of the accident, if the application is for accidental disability;
4. All descriptions of the member's duties;
5. All documents prepared by the member in connection with the application;
6. All documents prepared by the employer in connection with the application;
7. All documents prepared by the retirement board in connection with the application.

##### (b) **Decision to Deny Application**

If the retirement board decides to deny an application for disability retirement the board shall notify the Commission and notice of the decision and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(3).

(2) Decision to Restore a Member Who Was Retired for Disability to Active Service

(a) If within two years of retirement a medical panel convened pursuant to M.G.L. c. 32, § 8 unanimously finds that the member is able to perform the essential duties of the position from which he or she retired or so finds following completion of a rehabilitation program the member shall be returned to such position if it is vacant or a similar job within the same department for which he or she is qualified and his or her disability retirement shall be revoked. If such position is not vacant, the last person appointed to that rank or position shall be reduced in rank or position to create a vacancy and the person who was reduced in rank or position shall be placed at the top of the list to fill such rank or position for a two year period. The retirement board shall notify the member, the employer and the State Human Resources Division of the panel's determination. A copy of this notification shall be sent to the Commission.

(b) If after two years from the date of retirement a medical panel unanimously determines that the disability retiree is qualified for and able to perform the essential duties of the position from which he or she retired or a similar position within the same department, as determined by the State Human Resources Division, the member shall be returned to said position, provided the position is vacant. If a vacancy exists, the member shall be restored to active service in the position from which he or she retired. If no vacancy exists, the member shall be granted a preference for the next available position or similar position for which he is so qualified. The retirement board shall notify the member, the employer and the State Human Resources Division of the panel's determination. A copy of this notification shall be sent to the Commission.

(c) If a retiree is found able to return to his or her position as provided in 840 CMR 10.13(2)(b), and if no vacancy exists in the same or in a similar position, the retiree shall continue to receive his or her retirement allowance until reinstatement takes place or until the member's pension is reduced or revoked as a result of the submission of earnings information under M.G.L. c. 32, § 91A.

(d) If a member refuses to return to service or to file such information as the retirement board or the Commission shall require, the retirement board shall suspend his or her retirement allowance.

(e) If any member is restored to active service, his or her retirement allowance shall cease and the individual shall again become a member in service and regular deductions shall again be taken from regular compensation.

(f) Any creditable service in effect at the time of the member's retirement for disability shall thereupon be restored to full force and effect and, upon subsequent retirement, the member shall be entitled to a normal yearly allowance computed as though such disability retirement had not taken place. No additional contributions shall be required for receiving such creditable service. The amount of creditable service to be granted for the period during which the member received a disability

retirement allowance shall be based on the average amount of creditable service earned by the member for the 24 months immediately preceding the last day for which the member received regular compensation.

(g) The provisions of 840 CMR 10.13(2) shall not apply to any person who upon restoration to service would be classified in Group 3.

### **(3) Notice of Decision; Appeal**

(a) If the retirement board decides to deny an application for disability retirement, notice of the decision shall be sent to all parties within three days of the decision.

(b) A copy of M.G.L. c. 32, §§ 16(3) and (4) shall be included with the notice of decision and, upon request, the retirement board shall assist the applicant or retired member, as the case may be, in the filing of an appeal.

## **10.14**

### **Annual Statement of Earnings; Definition of Earnings From Earned Income; Refunds and Modifications Based on Earnings Information**

(1) The retirement board shall provide such information as the Commission shall require to assist it in performing its responsibilities pursuant to M.G.L. c. 32, §§ 91A and 91B.

(2) Upon receipt of notice from the Commission that a disability retiree has failed to file the Annual Statement of Earnings required by M.G.L. 32, § 91A, the retirement board shall review all information received and shall suspend the member's rights in and to the disability retirement allowance until the member has complied with the reporting requirements under M.G.L. 32, § 91A. Prior to any suspension of benefits, the member shall be given a written notice and an opportunity to be heard by the retirement board and, upon such termination or reduction of benefits, shall have the right to appeal such action to the Contributory Retirement Appeal Board.

(3) Upon receipt of notice from the Commission that a disability retiree has had earnings in excess of the amount allowed by M.G.L. 32, § 91A, the board shall request the member to refund the retirement allowance for that year or a portion thereof equal to such excess, as the case may be. Initial notice of a request for refund shall include the calculation on which the request is based and shall state that the member may, within 15 days, file a written request for a hearing to show cause why the disability retirement allowances should not be suspended or terminated or why no refund is due. If a retiree files a request for hearing, such hearing shall be held within 30 days of such request for hearing. The board shall notify the member of its decision, including a final request for refund, if any, within 30 days of the hearing. If the member is to be required to refund an amount to the board, the notice of the board's decision shall include notification that the member's allowance shall be withheld until the refund

is made. The member shall also be notified that if the refund is not made, payment of the retirement allowance shall be resumed only when the amounts withheld are sufficient to pay the amount of the refund. A copy of M.G.L. c. 32, § 16(4) shall be included with the notice of decision and, upon request, the retirement board shall advise and assist the applicant or retired member, as the case may be, in the filing of an appeal.

(4) The term “earnings from earned income” as used in G.L. c. 32, § 91A shall mean income that implies some labor, management or supervision in the production thereof, not income derived from ownership of property. For purposes of G.L. c. 32, § 91A, if an individual operates a business for profit, individually or through an agent, that individual does not have the option of classifying such income as dividends as opposed to wages. Profits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes.

## 10.15

### Examination of a Member Previously Retired for Disability

(1) If after an evaluation pursuant to M.G.L. c. 32, § 8 it is determined that a retired member is able to perform the essential duties of the position from which he or she retired or a similar job within the same department for which he or she is qualified without a medical or vocational rehabilitation program, or after the completion of a rehabilitation program as provided in 840 CMR 10.18, the Commission shall appoint a medical panel to examine the member to determine the scope of the member’s mental physical capabilities and whether the member is able to perform the essential duties of his job or the essential duties of a similar job within the same department given the member’s condition.

(2) The Commission shall appoint a panel to consist of a single physician or a three member medical panel. If a three member panel is appointed, the physicians need not examine the member at the same time and place. The panel shall consist of a physician skilled in the particular branch of medicine or surgery that would encompass the condition for which the member retired and such other physicians as the Commission determines necessary to determine the scope of the member’s capabilities and whether the member is able to perform the essential duties of his or her job or the essential duties of a similar job within the same department given the member’s condition

(3) The Commission shall give the member, the employer and the retirement board at least 14 days notice of the medical panel examination. An applicant may waive his or her right to 14 days notice by filing a written waiver with the Commission. Examinations shall be held at a reasonably convenient time and place for all parties.

#### (4) **Medical Tests**

The medical panel may suggest any “non-invasive” medical test which the panel considers necessary to render an opinion of the member’s medical condition. The Commission shall assume the cost of any non-invasive test suggested by the medical panel up to an amount

that the Commission shall determine annually. This annual determination will be communicated to all retirement boards during the month of January. No test the cost of which exceeds the annual amount determined by the Commission shall be ordered or required by the medical panel without the advance approval of the Commission.

(5) At the election of the member and employer, the member's physician and employer's physician, may be present and may answer questions from the panel during the decision making process of the panel. Neither physician shall otherwise participate in the decision making process of the panel.

(6) If a member is unable to attend any scheduled medical panel examination the member shall notify the Commission and may request that the examination be rescheduled. The Commission will ordinarily grant requests for rescheduling only for extenuating circumstances such as death in the family or hospitalization or serious illness of the member, provided that appropriate documentation of such is provided to the Commission. If a request for rescheduling is denied by the Commission, and the applicant fails to appear at the scheduled examination, the member shall reimburse the Commission for the costs of that examination. Reimbursement may be waived if the Commission finds that there was just cause for the member's failure to appear.

**(7) Confidentiality**

Since the principal purpose of the examination is to discuss and evaluate the physical condition or mental health of the member, attendance at the examination shall be limited to the member and the medical panel physician(s), the employee's physician and the employer's physician. The member's attorney and the employer's attorney may attend the examination. The member may permit the presence of other individuals, provided that their presence will not disrupt the examination. No document received during the examination shall be made available to the public except as may be required by other laws and regulations applicable to such records.

**(8) Certification of Panel Findings**

The medical panel shall report its findings and recommendations to the Commission on certificates supplied by the Commission within 60 days after completing the examinations. Within five days of receiving a properly completed medical panel or physician report, the Commission shall forward the report to the retirement board for appropriate action.

**(9) Restoration to Service of Sworn Members of the State Police**

The restoration to service process for sworn members of the State Police is provided for in G.L. c. 32, § 26. Retirees who would be restored to positions of sworn State Police Officers are to be evaluated once each year during the first two years after retirement, once every three years thereafter, or at any time upon written request. Any retiree who has been retired for disability under the provisions of G.L. c. 32, §§ 6, 7, or 26 for more than ten years, and has during such time complied with the evaluation requirements, shall not be required to participate in any further evaluations. The Commission's comprehensive medical evaluation and restoration to service process may involve examinations by four physicians. A single physician may examine the retired State Police Officer in the comprehensive medical evaluation process

and three physicians in the restoration to service process. Two of the three physicians in the restoration to service examination will be selected by the Commission and the third physician will be the State Police Surgeon. All physicians involved in the process must consider the Massachusetts State Police Officer's Medical Fitness Standards and Essential Task List, the Massachusetts State Police Academy Physical Fitness and Preparation Guide, and Physical Training Protocol when determining if a retiree is able to meet all of the Massachusetts State Police requirements. If the retiree completes the Commission's restoration to service process and is found able to perform the essential duties of his or her job, the medical reports are forwarded to the Colonel of the State Police. The Colonel makes the final determination with regard to a retiree's restoration to service.

**(10) Re-evaluation of Retiree Able to Perform the Essential Duties of His or Her Position**

When a retiree is found able to perform the essential duties of the position from which he or she retired, the Commission will notify the retiree, the retirement board, the employer, and the Commonwealth's Division of Human Resources. Some time may pass before a position becomes available and the retiree is actually restored to service. In the interim, a Commission case manager and a physician selected by the Commission will monitor the retiree's medical status. Every six months, the retiree will be asked to complete and return a health questionnaire to the Commission. The retiree will also be re-evaluated by a comprehensive medical evaluation physician upon any significant change in his or her medical condition and before returning to work. The goal is to assess the retiree's medical readiness to return to work and to minimize the possibility of missing a retraining opportunity.

## 10.16

### Modification of Retirement Allowance and Fair Amount of Outside Earnings and Potential Earnings Pursuant to M.G.L. c. 32, § 8(3)

(1) For purposes of 840 CMR 10.16, "regular compensation" means, regular compensation which would have been payable during the preceding year had the member continued in service in the grade held by him at the time he was retired.

(2) For purposes of 840 CMR 10.00, "potential earnings" shall mean:

(a) For a disability retiree who has been found able to return to his position, the amount that would have been received had he or she been reinstated to active service.

(b) For a disability retiree who has completed a rehabilitation program, an amount that the member can potentially earn will be determined as a part of the rehabilitation program, after consideration of a disability retiree's functional capacity, age, education, and experience.

(3) The Commission shall review all medical panel reports filed with respect to disability retirees, all earnings information submitted under M.G.L. c. 32, § 91A, and all reports submitted as the result of the completion of a rehabilitation program.

(4) If the Commission finds that:

(a) a retired member is engaged or is able to engage in gainful occupation, and

(b) that the annual rate of his actual or potential earnings is less than his regular compensation as defined in this subdivision, but is more than the difference between such regular compensation plus the sum of \$5,000, and the normal yearly amount of his retirement allowance, the yearly amount of his pension shall be reduced, and if his actual or potential earnings are more than such regular compensation, his pension shall be suspended.

(5) If the Commission finds that a member has submitted earnings information pursuant to M.G.L. c. 32, § 91A indicating earnings in excess of regular compensation as defined by this regulation, the member's pension shall be reduced or suspended and shall not be reinstated or increased for a period of one year unless a report of a medical panel finds that the mental or physical condition of such member has deteriorated. If the annual rate of his earnings should later be changed, the yearly amount of his pension shall be further modified by reinstating, increasing, reducing, or suspending it, as the case may be.

(6) For purposes of 840 CMR 10.00 and M.G.L. c. 32, § 8(3) the fair amount that a member retired for disability pursuant to M.G.L. c. 32, § 6 or 7 may earn or may potentially earn shall be annually adjusted for inflation. To accomplish this, the Commission will determine the increase in the consumer price index in the same manner as determined for purposes of M.G.L. c. 32, § 102 and shall increase by that amount the \$5,000 referred to in 840 CMR 10.16(4) be used in calculating the modification of a disability retiree's allowance pursuant to M.G.L. c. 32, § 8(3). Each year the Commission will issue an advisory to the retirement boards that will identify the increase for the following year and describe the method used to arrive at the increase. Any increases applied to the \$5,000 shall be permanent and any future increases will be applied to the permanent amount from the prior year.

## 10.17

### Evaluation For Rehabilitation Pursuant to M.G.L. c. 32, § 8(1)(a)

(1) The Commission, may require any member retired for disability under the provisions of M.G.L.c. 32, §§ 6 and 7 to participate in an evaluation to determine whether the member is able to perform the essential duties of the position from which he retired or a similar job within the same department for which he is qualified without a medical or vocational rehabilitation program, or whether such member's return to his former or similar job within the same department would likely be expedited by participation in a medical or vocational rehabilitation program. The retirement board shall provide such information as the Commission

shall require to assist it in determining whether a member shall be required to participate in a rehabilitation evaluation.

(2) The Commission may require an evaluation once per year during the first two year period next succeeding the date of retirement and once in each three year period thereafter, or at any time upon the written request by any disability retiree. The Commission may excuse a member from an evaluation if it determines that such examination is unwarranted based on the catastrophic nature of the member's illness or injury. Any such determination must be in writing. No member will be evaluated more frequently than once in any 12 month period.

(3) If the Commission determines that a retiree's return to active service might be expedited by participation in a medical or physical rehabilitation program, the retiree will be required to participate in a rehabilitation evaluation. The Commission shall schedule an appointment or appointments with rehabilitation evaluation specialists. The member shall be given 14 days notice of the time(s) and place(s) of the evaluation(s). Notice shall also be given to the retirement board.

(4) A rehabilitation evaluation shall include mental or physical examinations, vocational testing, meetings, and consultations with medical professionals, including the member's treating physician and vocational rehabilitation counselors as determined necessary by the rehabilitation evaluation specialist

(5) If a retired member refuses, without good cause to submit to any evaluation, the Commission shall notify the appropriate retirement board and his rights in and to the pension provided for in M.G.L. c. 32, §§ 6 and 7 shall promptly be terminated by the board. The member shall first be given written notice and an opportunity to be heard by the board with respect to such termination.

## 10.18

### Rehabilitation Pursuant to M.G.L. c. 32, § 8

(1) If following a rehabilitation evaluation pursuant to 840 CMR 10.17, the Commission determines that a retired member may benefit from rehabilitation program and that such a program is cost effective, the Commission shall advise the retirement board of its determination.

(2) The board shall provide the member with a rehabilitation program consisting of services appearing on a list of services approved by the Commission. All rehabilitation programs will include a determination of the member's potential earnings, taking into account the member's functional capacity, age, education, and experience. The retirement board shall pay the costs of the program (less any amounts payable under insurance policies of the member and less any scholarships or grants otherwise available.).

(3) Any member who is unreasonably denied access to such program may appeal such denial to the Contributory Retirement Appeal Board.

(4) If a retired member fails to complete a rehabilitation program without good cause, his rights in and to the pension provided for in M.G.L. c. 32, § 6 or 7 shall immediately be suspended.

(5) Upon completion of the rehabilitation program the Commission will notify the retirement board that a medical panel examination will be scheduled to determine if the member can perform the essential duties of the position from which he or she retired.

(6) The Commission will appoint a medical panel to examine the member to determine the scope of the member's physical capabilities in light of the completed rehabilitation program and whether the member is able to perform the essential duties of his or her job or the essential duties of a similar job within the same department given the member's condition.

(7) If a member fails to appear at any required examination without good cause, all his rights in and to the retirement allowance provided for in M.G.L. c. 32, § 6 or 7 shall be terminated by the board. The member shall first be given written notice and an opportunity to be heard by the board with respect to such termination.

## 10.19

### Rehabilitation Pursuant to M.G.L. c. 32, § 21

(1) Voluntary rehabilitation programs for disability retirees shall be developed in cooperation with the State Human Resources Division and the Industrial Accident Board and made available to any disability retiree seeking rehabilitation.

(2) Upon receipt of a request for rehabilitation from a disability retiree, the Commission shall provide an evaluation to determine whether the member might benefit from a medical or vocational rehabilitation program approved by the Commission. The Commission may require any such member to be examined and evaluated by a physician qualified to render rehabilitation services and/or by a vocational counselor selected by the Commission. The physician and/or both shall recommend the need for and nature of any such rehabilitation program. If the Commission determines that such member might benefit from any such program, it shall so notify such member and the retirement board.

(3) The board shall provide the member with a rehabilitation program consisting of services appearing on a list approved by the Commission of public or private rehabilitation agency(ies) having rehabilitation programs suitable for such member. The member shall meet with the agency selected and shall cooperate in the design of a suitable rehabilitation program. All rehabilitation programs will include a determination of the member's potential earnings, taking into account the member's functional capacity, age, education, and experience.

(4) If the board determines that the retired member may benefit from such rehabilitation program, and that the program is reasonable in its terms and cost, the board shall approve and offer to provide and pay for such program (less any amounts payable under insurance

policies of the member and less any scholarships or grants otherwise available.) The retirement board shall submit the rehabilitation program designed for the member, including detailed cost estimates, to the Commission for review.

(5) If the board determines that the retired member shall be denied access to a rehabilitation program, the board shall so advise the member in writing, detailing its reasons for the denial. The member may appeal the board's denial to the Commission. The appeal must be in writing and must be filed with the Commission within 15 days of the board's denial. The Commission shall review the matter and make its determination within 60 days of receipt of the member's appeal. If after review the Commission determines that such member might benefit from such rehabilitation program, the Commission shall approve and offer to provide and pay for such program.

(6) If the Commission approves the rehabilitation program offered by the board, the Commission shall reimburse the board for the costs of the program.

(7) The retirement allowance of a member participating in a rehabilitation program approved by the Commission shall be not be reduced or modified pursuant to M.G.L. c. 32, § 8(3) or § 91A on account of actual or potential earnings arising out of such rehabilitation program.

## 10.20

### Essential Duties

In connection with all applications for disability retirement and evaluations, re-evaluations or re-examination of disability retirees in connection with restoration to active service or participation in a rehabilitation program, a determination of the essential duties of the relevant job or position shall be made. The determination of what constitutes an essential duty of a job or position is to be made by the employer, based on all relevant facts and circumstances and after consideration of a number of factors. The employer will identify and delineate the duties the employer deems to be essential to the job or position under consideration.

The term "essential duties" as used in M.G.L. c. 32 and in all regulations promulgated by the Commission shall mean those duties or functions of a job or position which must necessarily be performed by an employee to accomplish the principal object(s) of the job or position. The essential duties of a position are those which bear more than a marginal relationship to the position. In making the determination as to whether a function or duty is essential, the employer shall consider and provide documentation to include, but not be limited to:

- (a) The nature of the employer's operation and the organizational structure of the employer;
- (b) Current written job descriptions;
- (c) Whether the employer requires all employees in a particular position to be prepared to perform a specific duty;

- (d) The number of employees available, if any, among whom the performance of the job function can be distributed;
- (e) The amount of time that employees spend performing the function;
- (f) Whether the function is so highly specialized that the person in the position was hired for his or her special ability to perform the function;
- (g) The consequences of not requiring the employee to perform the function;
- (h) The actual experience of those persons who hold and have held the position or similar position; and
- (i) Collective bargaining agreements.

If the State Human Resources Division has promulgated or promulgates a list or description of essential duties for a position that is consistent with those of the member's position, the employer shall submit such list or description as the essential duties for the position in question.

## 10.21

### Failure to Provide Information or Documents, Violation of Regulations

If a member of the retirement system willfully fails to provide information or documents required by the provisions of M.G.L. c. 32 or by 840 CMR 10.00, his or her allowance may be suspended until such information or documents are provided. Failure to provide information or documents required by 840 CMR 10.00 by any person, employer, governmental unit, retirement board, retirement board member or other entity shall be considered a violation of 840 CMR 10.00.

## Regulatory Authority

840 CMR 10.00: M.G.L. c. 7, § 50; c. 32, §§ 6, 8 and 21.

# 840 CMR 11.00

## Service After Age 70

### Section

- 11.01 Notice to Members
- 11.02 Deductions After Age 70; Election
- 11.03 Effect on Retirement Benefits

840 CMR 11.00 is the standard rule for service after age 70 promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50. Except as otherwise provided by the Commission, by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 11.00 shall govern the procedures of all retirement boards relating to service after age 70.

### 11.01

#### Notice to Members

Not more than 180 nor less than 120 days before the last day of the month in which a member in service attains the age of 70, the retirement board shall estimate the member's option (a), (b) and, if sufficient information is available, (c) retirement benefits as of age 70 and shall notify the member of the estimate and procedures for continuing in service after age 70. The board shall also supply the member with the appropriate form on which to choose whether to continue to have deductions made from regular compensation until the date of retirement as prescribed by 840 CMR 11.02.

### 11.02

#### Deductions After Age 70; Election

(1) Any member who chooses to continue in service after age 70 may elect to have deductions made from regular compensation until the date of retirement. The retirement board shall provide the member with the appropriate form on which the member may elect to have deductions made after age 70. This form shall be completed and filed by the member with the retirement board within 15 working days of the board's notice to the member or the member's 70th birthday, whichever is later. If this form is not timely filed, no deductions shall be made after age 70.

(2) An election to have deductions made after age 70 shall be final and deductions shall not thereafter be discontinued for any active member.

## 11.03

### Effect on Retirement Benefits

- (1) Except as provided by 840 CMR 11.02, no deductions shall be made from the regular compensation of a member continuing in service after age 70 and the retirement allowance shall be calculated based on average annual rate of regular compensation received prior to age 70.
- (2) For members who timely so elect pursuant to 840 CMR 11.02, deductions shall be made from regular compensation until the date of retirement and the retirement allowance shall be calculated based on average annual rate of regular compensation including compensation received after age 70.
- (3) No member shall be required to elect a retirement option pursuant to M.G.L. c. 32, § 12 until termination of employment.
- (4) If a member dies after age 70 but before termination, the member's spouse shall be entitled, if otherwise eligible pursuant to M.G.L. c. 32, to the benefits that would have been payable if the member had retired on the date of death and elected Option C.
- (5) Upon the decision of a member to terminate service, the member may file a retirement application with the retirement board and the retirement allowance shall be calculated pursuant to 840 CMR 15.04.

### Regulatory Authority

840 CMR 11.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 12.00

## Service Between Age 65 and 70

### Section

- 12.01 Notice to Members
- 12.02 Continuing Contributions
- 12.03 Effect on Retirement Benefits
- 12.04 Continuation of Service After Age 70

840 CMR 12.00 is the standard rule for service between age 65 and 70 promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and St. 1987, c. 415. Except as otherwise provided by the Commission, by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 12.00 shall govern the procedures of all retirement boards relating to service between age 65 and 70.

### 12.01

#### Notice to Members

- (1) The retirement board shall, not less than 180 days prior to the month during which a member of the system classified in Group 2 or Group 4 and as provided in St. 1987, c. 415 reaches age 65, obtain from the department head of the department in which the member is employed a statement that includes a description of the member's duties and the title of the office or position held by the member.
- (2) Not more than 180 nor less than 120 days before the last day of the month in which a member in service in Group 2 or Group 4 and as provided in St. 1987, c. 415 attains age 65, the retirement board shall determine whether the member is employed in an occupation or position for which age is not a bona fide occupational qualification as provided by St. 1987, c. 415 or regulations of the personnel administrator issued pursuant thereto.
- (3) Except as provided in 840 CMR 12.01(4), a member classified in Group 2 or Group 4 may elect to remain in service after age 65 if the member is mentally and physically capable of performing the duties of the member's office or position.
- (4) No such member may continue in service after age 65 if the member is in an occupation or position classification for which the personnel administrator determines by regulation that age is a bona fide occupational qualification or is in one of the following occupations or position classifications unless the personnel administrator determines by regulation that age is not a reasonably necessary bona fide occupational qualification:

- (a) uniformed member of a paid fire department;
- (b) uniformed member of a police department;
- (c) member of the department of fisheries and wildlife, as determined by the personnel administrator;
- (d) correctional officer;
- (e) permanent crash crewman, crash boatman, fire controlman, or assistant fire controlman employed at the General Edward Lawrence Logan International Airport.

(5) If the board determines that a member is in occupation or position classification that permits the member to continue in service after age 65, the board shall notify the member and shall provide an estimate of benefits as of age 65 to which the member would be entitled if the member were to retire at age 65.

(6) If the board determines that the member is in an occupation or position classification which requires that the member retire at age 65, the board shall notify the member of the date the member is required to retire.

## 12.02

### Continuing Contributions

Deductions shall be made from the regular compensation received by any member continuing in service between age 65 and 70.

## 12.03

### Effect on Retirement Benefits

The retirement allowance of a member continuing in service between age 65 and 70 shall be based upon the average annual rate of regular compensation, which may include regular compensation received between age 65 and 70, the age of the member at retirement and the amount of creditable service earned to the date of retirement.

## 12.04

### Continuation of Service After Age 70

Members who have continued in service between age 65 and 70 and who elect to continue in service after age 70 are subject to the provisions of 840 CMR 11.00.

## Regulatory Authority

840 CMR 12.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 13.00

## Elective Payroll Deductions For Service Purchases and Buybacks

### Section

#### 13.01 Acceptance of Pre-tax Rollovers from “Eligible Retirement Plans”

### 13.01

#### Acceptance of Pre-tax Rollovers from “Eligible Retirement Plans”

The following provisions are intended to implement the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and to enable public employees in Massachusetts to take advantage of the expanded tax-deferred roll-over opportunities permitting the purchase of creditable service from assets held in other tax-deferred retirement plans.

(1) A Retirement Board may accept any portion of an Eligible Rollover Distribution in payment of all or a portion of a member's purchase of service credit or service buybacks pursuant to M.G.L. c.32, §§ I through 28. A Retirement Board may accept an Eligible Rollover Distribution paid directly to the system in a Direct Rollover. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Retirement Board deems appropriate.

(2) The following definitions shall apply to 840 CMR 13.08:

**Direct Rollover** is a payment from an Eligible Retirement Plan specified by the member and made directly to the Retirement System.

**Eligible Retirement Plan** is any program defined in Code Sections 401(a)(31) and 402(c)(8)(B), from which the member has a right to an Eligible Rollover Distribution, as follows:

- (a) an individual retirement account under Code Section 408(a);
- (b) an individual retirement annuity under Code Section 408(b) (other than an endowment contract);
- (c) a qualified plan under Code Sections 401(a) or 403(a);

(d) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and

(e) an annuity contract under Code Section 403(b).

**Eligible Rollover Distribution** is any distribution of all or any portion of the balance to the credit of the member from an Eligible Retirement Plan. An Eligible Rollover Distribution does not include:

(a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the member or the joint lives (or joint life expectancies) of the member and the members designated beneficiary, or for a specified period of ten years or more;

(b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code ("Code");

(c) any distribution which is made upon hardship of the member; or

(d) the portion of any distribution that is not includible in gross income.

## Regulatory Authority

840 CMR 13.00 M.G.L. c. 7, § 50, c. 32, § 21.

# 840 CMR 14.00

## Applicability of Commission's Rules; Supplementary Rules

### Section

14.01 Commission's Rules

14.02 Supplementary Rules

### 14.01

#### Commission's Rules

Rules of the Public Employee Retirement Administration Commission shall apply to all retirement boards except as otherwise provided by the Commission or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02.

### 14.02

#### Supplementary Rules

(1) Any retirement board may request the Commission to approve rules applicable to that board which supplement the provisions of the Commission's rules. Supplementary rules will generally be approved if:

- (a) they are consistent with the Commission's rules or good cause exists for an exception to the Commission's rules;
- (b) their purpose cannot conveniently be accomplished by amendment of the Commission's rules; and
- (c) they have been the subject of a public hearing before the board for which reasonable notice has been given

(2) Supplementary rules shall take effect upon approval by the Commission or as may otherwise be provided by the Commission. A current list of all boards for which supplementary rules are in effect and copies of such rules shall be available upon request at the Public

Employee Retirement Administration Commission. Supplementary rules shall remain in effect according to their terms as approved by the Commission or until later amended or repealed as may be approved or required by the Commission.

## Regulatory Authority

840 CMR 14.00: M.G.L. c. 7, § 50; M.G.L. c. 32, §§ 6 and 21.

# 840 CMR 15.00

## Miscellaneous

### Section

- 15.01 Affidavit of Retired Members and Beneficiaries
- 15.02 Purchase of Prior Membership Creditable Service; Purchase of Creditable Service for Non-Membership Service, Rates of Contribution Upon Return to Active Service
- 15.03 Regular Compensation
- 15.04 Benefit Calculation Factors

### 15.01

#### Affidavit of Retired Members and Beneficiaries

(1) No less frequently than once every two years, each retirement board shall require each member or beneficiary who receives a pension, retirement allowance, or survivor's allowance to file with the retirement board an affidavit under the penalties of perjury, at such time and in such form as the board shall prescribe, containing the following information:

- (a) the name of the member or beneficiary;
- (b) the current address of the member or beneficiary;
- (c) a statement certifying that the member or beneficiary is currently living;
- (d) a statement describing the beneficiary's current marital status where marital status is relevant to continued receipt of benefits;
- (e) a statement describing the beneficiary's current dependency status where dependency is relevant to continued receipt of benefits; and
- (f) such additional information as the board may require to determine whether the member or beneficiary is entitled to continued receipt of benefits.

(2) The retirement board shall withhold the retirement benefits of any member or beneficiary who fails to file the affidavit within the time prescribed pending receipt of the affidavit. Upon receipt of the affidavit, any benefits so withheld shall be paid to the retired member or beneficiary.

(3) The retirement board may review and verify the accuracy of any affidavit submitted and shall audit a random sample of at least five per cent of the affidavits received.

## 15.02

### Purchase of Prior Membership Creditable Service; Purchase of Creditable Service for Non-Membership Service; Rates of Contribution Upon Return to Active Service

**(1) Purchase of Prior Creditable Membership Service.**

Any member authorized by law to purchase prior creditable service may purchase such service by paying an amount equal to the accumulated regular deductions withdrawn by the member, together with regular interest. Any member may make a lump sum payment or installment payments over a period not exceeding five years and may, with the approval of the board, make installment payments over a period exceeding five years.

(2) Upon submission of documentation satisfactory to the retirement board, a member will be allowed to purchase creditable service for periods of non-membership employment. The amount of creditable service that may be purchased shall be determined by the retirement board in a manner consistent with the retirement board's supplementary regulations that have been approved by the Commission pursuant to 840 CMR 14.00. The member may purchase less than all non-membership service available for purchase; provided, however, that in such event the member must purchase the most recent time first.

**(3) Rates of Contribution Upon Return to Active Service.**

The rates of contribution for members formerly in service who have returned to the service of the same or another governmental unit shall be as follows:

(a) for any member who contributed to a retirement system and did not receive a refund of accumulated deductions when he or she left service, the contribution rate, upon the member's return to service shall be the same rate as the member was contributing at the time he or she left service;

(b) the contribution rate for any member who contributed to a retirement system and received a refund of accumulated deductions after termination of service shall be the contribution rate in effect when the member re-established membership, whether or not the member purchases prior creditable service.

## 15.03

### Regular Compensation

(1) During any period of active service subsequent to the effective date of 840 CMR 15.03(1) the term "regular compensation" as defined by M.G.L. c. 32, § 1, shall include:

(a) The member's annual rate of compensation as provided in an approved salary schedule;

- (b) Any non-cash maintenance allowances in the form of full or partial boarding and housing, as provided in M.G.L. c. 32, § 22(1)(c);
- (c) Any part of such salary, wages, or other compensation derived from federal grants, except as otherwise provided in M.G.L. c. 32, § 3(2)(a)(xi);
- (d) Any premiums paid by any governmental unit for the purchase of an individual or group annuity contract as authorized by M.G.L. c. 15, § 18A or by M.G.L. c. 71, § 37B;
- (e) Any amounts paid as educational incentives;
- (f) Any amounts paid for length of service;
- (g) Any amounts paid as premiums for shift differentials; and
- (h) Any amounts paid as cost-of-living bonuses or cost-of-living pay adjustments.

(2) During such period the term “regular compensation” as so defined shall not include:

- (a) Any amounts paid for hours worked beyond the member’s normal work schedule;
- (b) Any amounts paid as premiums for working holidays, except as authorized by law;
- (c) Any amounts paid as bonuses other than cost-of-living bonuses;
- (d) Any amounts paid in lieu of or for unused vacation, sick leave, or severance pay;
- (e) Any amounts paid as early retirement incentives; and
- (f) Any other payments made as a result of the member giving notice of retirement.

## 15.04

### Benefit Calculation Factors

All retirement allowances effective on or after January 12, 1988 shall be computed on the basis of the Combined Annuity Table of Mortality set back one year and interest at the rate of three percent per annum and Option C factors, when applicable, pursuant to St. 1987, c. 697.

## Regulatory Authority

840 CMR 15.00: M.G.L. c. 7, § 50; c. 32, and 21.

# 840 CMR 16.00

## Investment Advice and Management

### Section

- 16.01 Definition
- 16.02 Employment of Qualified Investment Manager; When Permitted or Required; Delegation of Responsibility; Expenses; Contract
- 16.03 Authority of Investment Managers to Invest Funds
- 16.04 Use of Custodian Banks; Nominees; Securities Depository
- 16.05 Use of Brokers
- 16.06 Petitions for Additions to Legal List
- 16.07 Review of Investment Performance; Investment Managers
- 16.08 Procurement of Investment Related Services
- 16.09 Notice to Cease and Desist
- 16.10 Investment of Funds by Exempt Boards

840 CMR 16.00 is the standard rule for investment advice and management promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 16.00 shall govern investment advice and management provided to any retirement board in the Commonwealth.

### 16.01

#### Definition

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 16.00 through 25.00, shall have the meanings assigned them by 840 CMR 16.01. If no meaning is assigned by 840 CMR 16.01 they shall have the meanings assigned them by M.G.L. c. 32 and if no meaning is so assigned, they shall have their ordinary meanings.

**Person** means an individual, partnership, joint venture, corporation, association, trust, estate or organization of members of a retirement system.

**Qualified investment manager** means:

- (a) a person registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 et seq.);
- (b) a bank as defined by the Investment Advisers Act of 1940;

(c) an insurance company qualified to manage, acquire, or dispose of assets of a plan pursuant to the laws of more than one state;

(d) a partnership, joint venture, corporation, association or trust in which the advisor or general partner is exempt from registration pursuant to 203(b)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 et seq.)

## 16.02

### Employment of Qualified Investment Manager; When Permitted or Required; Delegation of Responsibility; Expenses; Contract

(1) Any board may employ a qualified investment manager as defined in 840 CMR 16.01 to advise the board on the purchase and sale of investments.

(2) Any board which has received an investment exemption pursuant to 840 CMR 19.00 shall employ a qualified investment manager or qualified investment managers who shall manage the funds of the system.

(3) No person who is not a qualified investment manager as defined by 840 CMR 16.01 shall advise any board on the purchase and sale of investments or manage the funds of any system which has received an exemption pursuant to 840 CMR 19.00.

(4) No board which has not received an exemption pursuant to 840 CMR 19.00 may delegate responsibility for the investment of the funds of the system provided, however, that any board may participate in or purchase units of the PRIT Fund.

(5) Employment of a qualified investment manager shall be by written contract executed prior to the delegation of investment authority to the qualified investment manager stating all terms and conditions of employment including, but not limited to, investment objectives, brokerage practices, proxy voting and tender offer exercise procedures, term of employment, fees and termination provisions. Every such contract shall provide that the qualified investment manager is a fiduciary with respect to the funds the board invests pursuant to the qualified investment manager's advice regarding the purchase and sale of investments or the funds which the qualified investment manager manages, as the case may be. No contract shall contain a provision which requires the indemnification of the manager by the retirement board. A copy of every contract shall be retained by the board and be subject to audit by the Commission.

(6) All qualified investment managers shall annually submit a current Form ADV Part II of the Uniform Application for Investment Adviser Registration to the board for which it manages assets and to the Public Employee Retirement Administration Commission.

## 16.03

### Authority of Investment Managers to Invest Funds

(1) Every board which has received an exemption pursuant to 840 CMR 19.00 shall by vote authorize a qualified investment manager as defined in 840 CMR 16.01 to invest and reinvest the funds of the system on behalf of the board in accordance with the board's statement of investment objectives.

(2) Every investment made by a qualified investment manager on behalf of a board shall comply with the requirements of M.G.L. c. 32, § 23 and 840 CMR 16.00 through 25.00.

## 16.04

### Use of Custodian Banks; Nominees; Securities Depository

(1) Every board shall designate one or more banks or trust companies, organized under the laws of the Commonwealth or of the United States, custodian of the securities and assets of the system, and shall designate as members of any nominee holding securities of the system any authorized employee of such custodian. All assets of the system shall be held by the custodian on behalf of the board. Each board shall direct its custodian to provide the Commission with the reports and information required pursuant to 840 CMR 4.00 and if possible, said reports and information shall be provided by electronic means or electronic access granted to the Commission.

(2) Any board may authorize a custodian designated pursuant to 840 CMR 16.04(1) to place the securities of the system in a securities depository registered with the Securities and Exchange Commission for the purpose of facilitating security trading and certificate delivery.

(3) In the event a board changes its custodian it shall make every effort to effectuate that change as of January 1.

## 16.05

### Use of Brokers

(1) Retirement system board members and employees shall not:

(a) direct brokerage commissions for services, or

(b) instruct its qualified investment manager or managers to direct brokerage commissions.

(2) Selection of brokers shall be based on competitive criteria including best price and execution.

(3) Commission rates shall be negotiated.

- (4) Board members shall review on an on-going basis all brokerage costs.
- (5) Board members shall review on an on-going basis the selection of brokers and use of “soft dollars” (arrangements under which products or services other than execution of securities transactions are obtained from or through a broker in exchange for the direction of brokerage transactions to the broker) by its qualified investment manager or managers.
- (6) Board members shall require the qualified investment manager or managers or brokers to disclose in writing to the board all commissions charged on all transactions and investments made.
- (7) Board members shall require the qualified investment manager or managers or brokers to disclose in writing to the board mark-ups and mark-downs on all trades where the broker acted as dealer/principal.
- (8) Notwithstanding the provisions of 840 CMR 16.00 boards may participate in so-called “commission recapture” programs provided that such participation is consistent with the board’s fiduciary duty and other provisions of 840 CMR.

## 16.06

### Petitions for Additions to Legal List

Every board which petitions the Office of the Commissioner of Banks for inclusion of securities on the Legal List shall forward a copy of the petition and the final determination by the Commissioner of Banks as to inclusion on the Legal List to the Commission.

## 16.07

### Review of Investment Performance; Investment Managers

- (1) Every retirement board shall at least quarterly review the performance of the overall portfolio and selected components against the retirement system’s investment goals and policies.
- (2) Every retirement board which has received an exemption pursuant to 840 CMR 19.00 shall meet with its qualified investment manager or managers at least annually and shall, at a minimum:
  - (a) require its qualified investment manager or managers to provide a comprehensive written quarterly report which includes a review of investment performance including a review of the investment manager’s relative performance, a review of the system’s investments, and a report on the investment manager’s current investment outlook or forecast as well as strategy for the future;
  - (b) review each such report in depth with its qualified investment manager or managers; and

(c) require its qualified investment manager or managers to send one such report to the Commission each year.

(3) Every retirement board which has retained a qualified investment manager shall at least annually make a determination as to whether the manager continues to operate in the manner represented when retained and outlined in the agreement between the board and the qualified investment manager.

(4) Every retirement board which has retained a qualified investment manager shall require said manager to report key personnel staffing changes to the retirement board and the Commission on or before the effective date of such changes.

## 16.08

### Procurement of Investment Related Services

The selection and hiring of investment managers, consultants, custodian banks and other investment related service providers by all retirement boards shall be subject to a competitive process which satisfies the boards' fiduciary duty and meets the requirements of M.G.L. c. 32 and 840 CMR. Prior to retention of the vendor Boards shall notify the Commission that such a process as well as the provisions of M.G.L. c. 32 and 840 CMR were adhered to. A procurement file for each such selection shall be maintained by the board and be subject to audit. Said file shall contain the request for proposals, selection process, selection criteria and other information relative to the board meeting its fiduciary responsibility with respect to the selection.

A person submitting a bid or proposal to provide services to a board shall certify, in writing, on the bid or proposal, as follows:

The undersigned certifies under penalties of perjury that this bid or proposal has been submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, club, or other organization, entity or group of individuals.

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(Signature of individual submitting bid or proposal)

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(Name of business)

## 16.09

### Notice to Cease and Desist

If the Executive Director of the Public Employee Retirement Administration Commission has reason to believe that any person including, without limitation, any board or member or qualified investment manager thereof, has invested or is investing the funds of a system without authorization or in violation of any provision of M.G.L. c. 32, or 840 CMR 16.00 through 25.00, inclusive, the Executive Director shall issue a notice to such person to cease and desist from doing so and, if the Executive Director finds that protection of system funds so require, the Executive Director may:

- (1) remove any such person from advising any retirement system or managing the funds of any system;
- (2) revoke any exemption granted to such board pursuant to 840 CMR 19.00; or
- (3) petition the Superior Court to compel the observance and restrain the violation of any provision of M.G.L. c. 32, § 23, or 840 CMR 16.00 through 25.00.

## 16.10

### Investment of Funds by Exempt Boards

Notwithstanding the provisions of 840 CMR 19.00, retirement boards which have received an exemption in accordance with 840 CMR 19.00 may retain investment responsibility for sufficient assets necessary to cover current disbursements.

### Regulatory Authority

840 CMR 16.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.

# 840 CMR 17.00

## Standards of Conduct for Fiduciaries and Qualified Investment Managers

### Section

- 17.01 Bonding of Persons Having Access to Retirement Board Funds
- 17.02 Code of Ethics for Fiduciaries
- 17.03 Standards of Conduct for Fiduciaries
- 17.04 Standards of Conduct for Qualified Investment Managers

840 CMR 17.00, establishing standards of conduct for fiduciaries and qualified investment managers is promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 17.00 shall govern the conduct of all retirement board fiduciaries and qualified investment managers. No person who is not a qualified investment manager as defined by 840 CMR 16.01 shall provide investment advice on the purchase and sale of investments to or manage the funds on behalf of any retirement system.

### 17.01

#### Bonding of Persons Having Access to Retirement Board Funds

All board members and retirement system staff shall be bonded in an amount sufficient to provide reasonable protection against losses due to fraud and dishonesty and each shall be bonded for no less than 10% of the amount of the fund or \$500,000. The Commission may prescribe a bond in excess of \$500,000, provided that such bond shall not exceed 10% of the amount of the fund.

### 17.02

#### Code of Ethics for Fiduciaries

Fiduciaries shall subscribe and conform to the following code of ethics:

- (1) Fiduciaries shall conduct themselves with integrity and act in an ethical manner in their dealings with the public, retirement board, employers, employees, and fellow fiduciaries.

- (2) Fiduciaries shall conduct themselves and shall encourage other fiduciaries to perform their functions in a professional and ethical manner that will reflect credit on themselves and their profession.
- (3) Fiduciaries shall act with competence and shall strive to maintain and improve their competence and that of others in their profession.
- (4) Fiduciaries shall use proper care and exercise independent professional judgment.

## 17.03

### Standards of Conduct for Fiduciaries

Every fiduciary shall know and comply with all applicable provisions of M.G.L. c. 268A governing the conduct of public officials and employees and shall conform to the standards of conduct prescribed by M.G.L. c. 268A, § 23.

(1) Every fiduciary shall:

- (a) Comply with the standards set forth in 840 CMR 1.00
- (b) operate in accordance with retirement system procedures, documents and instruments; and
- (c) inform each retirement system qualified investment manager of the Code of Ethics and Standards of Conduct applicable to qualified investment managers pursuant to 840 CMR 17.02 and 17.04.

(2) No fiduciary shall:

- (a) receive additional compensation for services as a retirement board fiduciary if he or she is employed full-time by an employer whose employees are members of that retirement system except as otherwise provided by law;
- (b) deal with retirement system assets for his or her own account or in his or her own interest;
- (c) act in any manner affecting a retirement system on behalf of any person or organization whose interests are adverse to the interests of the system, its members or beneficiaries;
- (d) receive anything of value for his or her own personal account from any person or organization in connection with a transaction involving retirement system assets; or
- (e) cause a retirement system to engage in a transaction which involves, directly or indirectly, a sale, exchange, lease or transfer of assets to or from, or the use of assets

by or for the benefit of, or the furnishing of goods, services or facilities to or by, or the lending of money or extension of credit to or by, a party in interest. A party in interest includes:

1. any board member, fiduciary, employee, broker, agent or person providing services to the board;
2. any organization of members of the retirement system;
3. any corporation, partnership, or trust or estate of which or in which 10% or more of:
  - a. the voting stock or value of all stock of such corporation;
  - b. the interest in capital or profits of such partnership; or
  - c. the beneficial interest of such trust or estate is owned directly or indirectly by persons described in 840 CMR 17.03(2)(e)1.; and
4. any spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in 840 CMR 17.03(2)(e)1.

## 17.04 Standards of Conduct for Qualified Investment Managers and Consultants

In addition to the standards of conduct for fiduciaries and the standards set forth in 840 CMR 1.00 Qualified Investment Managers shall comply with 840 CMR 17.04. 840 CMR 17.04 shall also apply to Consultants retained pursuant to 840 CMR 25.00.

### (1) Compliance with Applicable Law, Regulations, Code of Ethics and Standards of Conduct.

(a) Knowledge of and Compliance with Applicable Law, etc. Every qualified investment manager and every consultant shall be familiar with and comply with all applicable laws and rules and regulations, including rules and regulations of any self-regulatory agency of the profession, the standards of conduct of 840 CMR 17.03 and 17.04 and the code of ethics of 840 CMR 17.02.

(b) Assisting Legal and Ethical Violations Prohibited. No qualified investment manager or consultant shall knowingly participate in, or assist any act in violation of any statute or regulation governing securities matters or any act in violation of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04.

(c) Use of Material Non-Public Information Prohibited. Every qualified investment manager and every consultant shall comply with all laws and regulations relating to

the use of material non-public information. No qualified investment manager or consultant shall communicate or take investment action on the basis of such information until it is publicly disseminated and any qualified investment manager or consultant who acquires such information, other than as a result of a special or confidential relationship with an issuer, shall make reasonable efforts to achieve public dissemination of such information by the issuer.

## **(2) Supervision of Employees**

Every qualified investment manager and every consultant shall exercise reasonable supervision over employees and agents subject to his or her control to prevent violation by such persons of applicable statutes, regulations, the code of ethics of 840 CMR 17.02 and the standards of conduct of 840 CMR 17.03 and 17.04.

## **(3) Investment Recommendations and Actions**

(a) Reasonable judgment. Every qualified investment manager and every consultant shall exercise diligence and thoroughness in making investment recommendations and/or in taking investment actions for a retirement board and shall:

1. have a reasonable and adequate basis for each investment recommendation and action, supported by appropriate research and investigation; and
2. maintain appropriate records to support the reasonableness of each investment recommendation and action.

### **(b) Portfolio Investment Recommendations and Actions**

Every qualified investment manager and every consultant shall, when making an investment recommendation or taking an investment action for any portfolio or retirement board, consider its appropriateness and suitability for that particular portfolio or board. In doing so, the qualified investment manager and consultant shall take into account the needs and circumstances of the board, the basic characteristics of the portfolio and the basic characteristics of the investment involved. Every qualified investment manager and every consultant shall use reasonable judgment in determining the factors to be considered and the weight to be given to each factor and shall distinguish between fact and opinion in presenting investment recommendations.

## **(4) Misrepresentation Prohibited**

No qualified investment manager or consultant shall make any statement, orally or in writing, which materially misrepresents the services that the qualified investment manager or consultant is capable of performing for the board, the qualifications of the qualified investment manager or consultant, the investment performance that the qualified investment manager has achieved or can be expected to achieve for the board or the expected performance of any investment. No qualified investment manager or consultant shall make any unsupported statement concerning these matters or any statement, orally or in writing, about any investment which guarantees or conveys any unsupported assurances, explicitly or implicitly.

**(5) Fair Dealing With Retirement Boards**

Every qualified investment manager and every consultant shall act in a manner consistent with the qualified investment manager's and consultant's obligation to deal equitably with a board when making investment recommendations, making material changes in prior investment advice, and taking investment action.

**(6) Priority of Transactions**

Every qualified investment manager and consultant shall conduct himself or herself in such a manner that transactions for the retirement board have priority over personal transactions, and that personal transactions do not operate adversely to the board's interest. A qualified investment manager making a recommendation about the purchase or sale of a security shall give the board adequate opportunity to act on the recommendation before acting on the qualified investment manager's own behalf.

**(7) Disclosure of Conflicts**

(a) Every qualified investment manager, and every consultant when making an investment recommendation or taking an investment action, shall disclose to Commission and the board in writing any conflict of interest the qualified investment manager or consultant may have and any beneficial ownership of the securities involved which could reasonably be expected to impair the qualified investment manager's or consultant's ability to render unbiased and objective advice.

(b) Every qualified investment manager, and every consultant shall disclose to the Commission and the board in writing all matters which could reasonably appear to interfere with the qualified investment manager's or consultant's duty to the board or ability to render unbiased and objective advice.

(c) Every qualified investment manager, and every consultant shall also comply with all requirements as to disclosure of conflicts of interest imposed by law and by rules and regulations of organizations governing the activities of investment advisors and shall comply with any prohibition of such activities if a conflict of interest exists.

**(8) Compensation**

**(a) Disclosure of Additional Compensation Arrangements**

Every qualified investment manager, and every consultant shall inform the Commission and the board of any arrangements, oral or in writing, for compensation or other benefit received or expected to be received by the qualified investment manager or consultant or a related person from others in connection with the qualified investment manager's or consultant's services to the board.

**(b) Disclosure of Referral Fees**

Every qualified investment manager and every consultant shall disclose to the Commission and the board any compensation paid or expected to be paid, directly or

indirectly, by the qualified investment manager or consultant or a related person to others for referring the services of the qualified investment manager or consultant to the board.

**(9) Relationships with Others**

**(a) Preservation of Confidentiality**

Every qualified investment manager and every consultant shall preserve the confidentiality of information communicated by the board concerning matters within the scope of the confidential relationship, unless the qualified investment manager or consultant receives information concerning illegal or potentially illegal activities on the part of any fiduciary or employee of the board. Any knowledge of illegal or potentially illegal activities on the part of any fiduciary or employee of the board shall be conveyed to all the members of the board and the Commission.

**(b) Maintenance of Independence and Objectivity**

Every qualified investment manager and every consultant, in relationships and contacts with an issuer of securities, whether individually or as a member of a group, shall use particular care and good judgment to achieve and maintain independence and objectivity.

**(10) Enforcement and Liability**

(a) Every qualified investment manager and every consultant shall be deemed to have agreed with the retirement board:

1. to be liable to the board for any losses due to any violation of the provisions of M.G.L. c. 32, § 23 or of 840 CMR 17.00 including without limitation, any violation of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04;
2. to be subject to removal as a qualified investment manager or consultant by the Commission in the event that the Commission determines that the qualified investment manager or consultant has violated any of the provisions of M.G.L. c. 32, § 23 or of 840 CMR 17.00, including, without limitation, any provision of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04; and
3. that neither the board nor the Commission shall be liable to the qualified investment manager or consultant for any such loss, by way of indemnity or otherwise, or for any such removal.

(b) No qualified investment manager or consultant removed by the Commission pursuant to 840 CMR 17.04(10)(a)2. shall continue to serve or be employed as a qualified investment manager or as a consultant by any other retirement board except as may otherwise be authorized by the Commission.

## Regulatory Authority

840 CMR 17.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.

# 840 CMR 18.00

## Formation of Investment Policy and Statement of Investment Objectives

### Section

18.01 General Requirement

18.02 Matters to be Included in Statement of Investment Objectives

18.03 Updates of Statement of Investment Objectives

840 CMR 18.00 is the standard rule for the formation of investment policy and statement of investment objectives promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 18.00 is the standard rule for the formation of investment policy and statement of investment objectives.

### 18.01

#### General Requirement

(1) Every board shall file a statement of investment objectives with the Public Employee Retirement Administration Commission.

(2) Before designing an investment program and writing a statement of objectives, every board shall consider its most recent actuarial valuation, meet with the board's consultant, if any, and address the following questions:

- (a) What stage of growth best describes the system: start-up, early growth, sustained growth, maturity, or decline?
- (b) What are the estimates of growth in the workforce, benefit increases, inflation and other economic factors?
- (c) What is the projected level of cash payments to beneficiaries for the next 20 years (the "liabilities stream")?
- (d) What assumption regarding "real investment return" (total return less wage inflation rate) is used by the actuary to make funding estimates?
- (e) Is the system underfunded?

(f) What has been the history of employer and employee payments into the system? Is there any reason to expect that these will change?

(g) What is the long-term demographic forecast for the system area? What may affect the tax base including such factors as population and business growth, rate of growth or decline and condition of housing stock and industrial facilities?

(3) Asset allocation decisions shall be made based on a liability-sensitive approach which tailors asset allocation for the portfolio to the system's liability profile. Boards shall conduct an initial study of the asset universe and establish the asset allocation in a manner that recognizes the financial structure of the system. Asset allocation decisions shall establish target levels and ranges for asset percentages.

## 18.02

### Matters to be Included in Statement of Investment Objectives

Every statement of investment objectives shall be filed on Form 18, shall be signed by each board member and shall include the following information:

**(1) Fiduciaries**

The name, address, background and responsibilities of every retirement board fiduciary, including every qualified investment manager employed or expected to be employed by the board.

**(2) Terms of Employment and Compensation**

The terms of employment and compensation of every:

- (a) qualified investment manager;
- (b) consultant employed by the board;
- (c) custodian bank employed by the board;
- (d) actuary employed by the board;
- (e) attorney employed or used by the board; and
- (f) other contractor employed by the board.

**(3) Investment Policy**

A statement of investment policy indicating how investment objectives are to be accomplished including the investment philosophy and method of investment, whether a consultant will be employed, whether a qualified investment manager will be employed, the method to be used to select brokers on a competitive basis for investment transactions, guidelines for proxy voting and tender offer exercise procedures and other practices of the board.

**(4) Rate of Return**

A statement of the rate of return objective for each asset class and for the entire portfolio, provided that the statement also include the assumed rate of return used in the most recent actuarial valuation of the system. The rate of return objective for the entire portfolio should not exceed the assumed rate of return used in the most recent actuarial valuation of the system by more than 1.00%.

**(5) Risk**

The expected level of risk for the equity portion of the portfolio expressed in terms of an annual average beta coefficient, standard deviation, or other statistical risk measures and the expected duration of the fixed income portfolio. Risk levels shall also be established for other asset classes and the total portfolio.

**(6) Asset Mix**

The expected portfolio asset mix, expressed as a percentage of the entire portfolio, of equities, fixed income investments, cash and short term investments, real estate, alternative investments, and international investments.

**(7) Diversification**

The expected degree of diversification within each asset class for:

- (a) equities, including capitalization, industry diversification, number of issues and rate of turnover;
- (b) fixed income investments, including quality ratings, maturity schedule, industry diversification, number of issues, par value of issues and rate of turnover;
- (c) cash and cash equivalent investments, including types of instruments and insurance coverage;
- (d) real estate investments;
- (e) alternative investments such as venture capital and leveraged buy-outs;
- (f) international equities, including capitalization, country and industry diversification, number of issues and rate of turnover;

(g) international fixed income investments, including quality, maturity schedule, country and industry diversification, number of issues, par value of issues and rate of turnover; and

(h) international cash and cash equivalent investments, including country diversification, types of instruments and insurance coverage.

**(8) Other**

Such further information as may otherwise be required by the Commission.

## 18.03

### Updates of Statement of Investment Objectives

Statements of objectives shall be updated by the board as changes occur including, but not limited to, the filing of an Application for Exemption as provided for in 840 CMR 19.00. The board shall notify Commission in writing of any such changes within ten days of the effective date of the change. Boards shall review and, if appropriate, amend the statement of objectives upon completion of each actuarial valuation of the system. In addition on or before December 31 of each year the board shall notify the Commission of whether or not any changes have been made in the statement of objectives and in the event changes have been made said board shall notify the Commission of those changes.

### Regulatory Authority

840 CMR 18.00: M.G.L. 7, § 50; c. 32, §§ 21 and 23.

# 840 CMR 19.00

## Exemptions From Investment Restrictions

### Section

- 19.01 Effect of Existing Exemptions
- 19.02 Complete Exemption by Commission
- 19.03 Revocation of Exemption
- 19.04 Determination of Qualifications of Investment Manager; Review of Application
- 19.05 Rating of Investment Performance and Qualifications

### 19.01

#### Effect of Existing Exemptions

(1) Any board which has received an exemption from restrictions on investments of M.G.L. c. 32, § 23(2)(b)(i) through (vii) on or before the effective date of 840 CMR 19.00 shall be deemed to have applied for and received an exemption for investment in the asset class which was the subject of the prior exemption. In the even any such board, following the completion of a competitive process as required by these regulations, selects a qualified investment manager appearing on a list of qualified investment managers promulgated by the Public Employee Retirement Administration Commission the board may retain said qualified investment manager without receiving a further exemption, provided, however, that the board has complied with other provisions of 840 CMR. Said list shall consist of all qualified investment managers which have been the subject of approved applications for exemption on or before the effective date of 840 CMR 19.00 and any qualified investment manager which is the subject of an approved application for exemption after that date.

(2) Boards shall use the following process in selecting qualified investment managers to invest in equity, fixed income, cash or cash equivalents. Boards shall establish specifications and criteria for selection including:

- (a) the total size of the portfolio to be managed by each prospective manager;
- (b) the number of managers that will be used for the total portfolio;
- (c) an initial determination as to whether existing managers will be retained automatically or reviewed as part of the overall selection process;
- (d) the type(s) of manager to be selected;

- (e) the size of the management firm desired;
- (f) the style or investment philosophy of the manager desired;
- (g) the methodology or investment process desired;
- (h) the range of fees that are considered tolerable;
- (i) the investment manager's use of soft dollar services; and
- (j) the manager's experience in policy restrictions including South Africa, Northern Ireland and tobacco restrictions.

(3) Boards shall use the following process in selecting qualified investment managers to invest in real estate. Boards shall establish specifications and criteria for selection including:

- (a) the total size of the portfolio to be managed by each prospective manager;
- (b) the type of real estate investment made by each qualified investment manager (unleveraged, leveraged, participating mortgage, straight-rate loans, or insured loans);
- (c) the construction stage of the properties (tenanted, rent-up phase, under construction or to be built);
- (d) the types of property to be selected (retail, office, residential or industrial);
- (e) the geographic distribution of properties (regional, limited geographic diversification, or national);
- (f) the number of properties to be selected by each investment manager; and
- (g) the range of fees that are considered tolerable.

(4) Real estate investments shall not exceed 5% of the total market value of the portfolio at the time of investment, provided that in any system with assets in excess of \$50,000,000, real estate investments may be made up to an amount equal to 10% of the total market value of the portfolio at the time of investment.

(5) Real estate investments shall be diversified by property type, geographic location and construction stage unless under the circumstances it is clearly prudent not to do so.

(6) No board shall invest in a group trust, limited partnership, or other form of pooled investment which invests in real estate if:

- (a) the board's investment would constitute more than 10% of the funds thereof;
- (b) the investments of all Massachusetts contributory retirement systems would constitute more than 50% of the funds thereof; or
- (c) more than 20% of the funds thereof are invested in a single investment.

(7) Boards shall use the following process in selecting qualified investment managers to invest in alternative investments:

- (a) Boards shall establish specifications and criteria for selection including:
  - 1. the total size of the portfolio to be managed by each alternative investment manager;
  - 2. the funding stage orientation (seed financing, start-up, other early stage, second stage financing, later stage financing, or other);
  - 3. the targeted industries or sectors;
  - 4. the location or region (geographic focus);
  - 5. target size of each investment, how much is generally invested and how much is kept in reserve;
  - 6. the range of fees that are considered tolerable, provided, however, that in no event shall a Board retain a qualified investment manager whose fee is based on a percentage of committed capital, provided, however, that such a fee may be paid for one year after the partnership commences operations, and provided further, that such a fee is paid by all investors;
  - 7. the expected return on investment.

(8) Alternative investments shall not exceed 3% of the total market value of the portfolio at the time of the investment provided that, in any system with assets in excess of \$25,000,000, alternative investments may be made up to an amount equal to 5% of the total market value of the portfolio at the time of investment.

(9) Alternative investments shall be diversified by funding stage, geographic location and targeted industries unless under the circumstances it is clearly prudent not to do so.

(10) No board shall invest in a group trust, limited partnership, or other form of pooled investment which invests in alternative investments if:

(a) the board's investment would constitute more than 10% of the funds thereof;

(b) the investments of all Massachusetts contributory retirement systems would constitute more than 50% of the funds thereof; or, more than 20% of the funds thereof are invested in a single investment.

(11) Boards shall select a qualified investment manager in accordance with competitive practices and shall notify the Commission that such practices were followed prior to contracting with a vendor and shall maintain a separate file for each such selection which details the process and which shall be subject to audit.

## 19.02

### Complete Exemption by Commission

The Commission shall grant exemption from the restrictions on investment of M.G.L. c. 32, § 23(2)(b)(i) through (vii), inclusive as follows:

**(1) Complete Exemption**

Boards assigned 70% or more of the total applicable points pursuant to the criteria developed in accordance with 840 CMR 19.05 shall be granted complete exemption.

**(2) No Exemption**

Boards assigned less than 70% of the total applicable points pursuant to the criteria developed in accordance with 840 CMR 19.05 shall be granted no exemption.

(3) The Commission shall also consider other factors, including but not limited to, any regulatory action, litigation, or legal proceedings involving the qualified investment manager in the past five years and any other matters relating to the qualifications of the investment manager and shall determine whether any such matters warrant denial of an exemption. The Commission shall notify the board and the qualified investment manager of the reasons for any such denial of exemption. The Commission may withhold approval of an exemption if it is in the best interests of the retirement system.

(4) The Commission shall notify the board of its determination no later than ten days following receipt of all information needed to make such determination.

(5) The provisions of M.G.L. c. 32, § 23(2)(b)(i) through (vii) shall not apply to the retention of a qualified investment manager to invest assets of a board in fixed income securities or equities of United States Corporations provided those securities or shares are not an investment in alternative investments or real estate.

## 19.03

### Revocation of Exemption

(1) If the Commission has reason to believe that a board granted exemptions pursuant to 840 CMR 19.00, or the investments of any board, do not comply with the requirements of M.G.L. c. 32, § 23(2), or with the requirements of 840 CMR 19.00, the Commission may require the board to show cause why the exemptions should not be revoked. If the board fails to establish that its investments do so comply, the Commission may revoke the exemptions and the board shall thereafter be subject to the restrictions on investments of M.G.L. c. 32, § 23(2)(b)(i) through (vii).

(2) If the Commission determines that an action of a qualified investment manager, including but not limited to, involvement in any regulatory action, litigation or legal proceedings, change in principals or senior investment professionals, or performance significantly impairs or changes the manager's ability to perform, the Commission may remove the qualified investment manager from the list promulgated in accordance with 840 CMR 19.01.

(3) Any board upon revocation or withdrawal of an exemption shall annually file a report with the Commission which outlines which investments not authorized pursuant to the restrictions of M.G.L. c. 32, § 23(2)(b)(i) through (vii) are held by the board and why they continue to be held.

(4) In the event a qualified investment manager is no longer retained by any retirement board, the qualified investment manager shall be removed from the list promulgated in accordance with 840 CMR 19.01.

## 19.04

### Determination of Qualifications of Investment Manager; Review of Application

#### (1) **Investment Manager**

The Commission shall determine, for every application for exemption, whether the board has a qualified investment manager as defined by 840 CMR 16.01.

#### (2) **Review of Application**

If the Commission determines that the board has a qualified investment manager, the Commission shall review the selection process of the qualified investment manager, review the information contained in the application for exemption, consider the diversification of the investments of the board, and professional qualifications of the qualified investment manager in accordance with 840 CMR 19.05.

## 19.05

### Rating of Investment Performance and Qualifications

In rating investment performance and qualifications the Commission shall develop and disseminate objective criteria uniformly to be applied in an equitable fashion. These criteria shall include, but not be limited to, the investment performance of the system, investment performance of investment manager for asset classes which investment manager will manage, professional qualifications of investment manager, public and private pension accounts managed by investment manager as of the year preceding the year of application, registration of investment adviser under the Investment Advisers Act of 1940, investment manager's review and control procedures, daily supervision of portfolio and trading capability.

### Regulatory Authority

840 CMR 19.00: M.H.L. c. 7, § 50; c. 32, §§ 21 and 23.

(840 CMR 20.00: RESERVED)

# 840 CMR 21.00

## Prohibited Investments

### Section

#### 21.01 Prohibited Investments

840 CMR 21.00, establishing a list of prohibited investments, is promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 21.00 shall prohibit investments of retirement system funds invested pursuant to M.G.L. c. 32, § 23, whether or not exempt pursuant to 840 CMR 19.00.

### 21.01

#### Prohibited Investments

No investment by any board or by any bank pooled fund, mutual fund, group trust, limited partnership, insurance company separate account or other form of pooled investment of any board shall consist of any of the following:

- (1) Purchases of securities by partial payment of their cost (purchases on margin).
- (2) Sale of securities not owned by the system at the time of sale (short sales).
- (3) Future contracts other than as follows:
  - (a) Forward currency contracts may be written against securities in the international portfolio by an investment advisor registered under the Investment Advisors Act of 1940 and who has been the subject of an exemption for international investment.
  - (b) Forward currency contracts may be written against securities in an international portfolio to a maximum 25% of the international portfolio non-dollar holdings at market value. Speculative currency positions unrelated to underlying portfolio holdings are strictly prohibited.
- (4) Call options written against securities in the portfolio other than as follows:
  - (a) Call options may be written against equity securities (excluding international equities) in the portfolio by a qualified investment adviser registered under the Investment Advisors Act of 1940.
  - (b) Call options may be written against equity securities (excluding international

equities) in the portfolio to a maximum of 25% of the market value of the equity portfolio (excluding international equities).

(c) Only options listed on a U.S. registered exchange may be written.

(5) Purchases of options other than as required to close out options positions.

(6) Lettered or restricted stock (with the exception of those investments that are venture capital investments).

(7) Direct investment in mortgages.

(8) Collateral loans (with the exception of those investments that are leveraged buyout investments), provided, however that boards may participate in so-called “securities lending” programs through a custodian and provided, further, that the lending of securities is limited to brokers, dealers, and financial institutions and that the loan is collateralized by cash or United States Government securities according to applicable regulatory requirements.

(9) Loans to employees or individuals.

(10) Direct purchase or lease of real estate.

## Regulatory Authority

840 CMR 21.00: M.G.L. c. 7, § 50; M.G.L. c. 32, §§ 21 and 23.

(840 CMR 22.00: RESERVED)

# 840 CMR 23.00

## Recognition of Gains and Losses

### Section

23.01 Amortization Schedule

23.02 Definition of Realized Gains or Losses and Unrealized Gains and Losses

### 23.01

#### Amortization Schedule

The actuary may, in the determination of the appropriation amounts pursuant to M.G.L. c. 32, § 22(3)(d) or, for the state employees' retirement system, the teachers' retirement system and those systems who have elected to adopt M.G.L. c. 32, § 22D, in the determination of a funding schedule, amortize realized gains and losses and unrealized gains and losses over a period of five years or any other period of time as prescribed by the Commissioner.

### 23.02

#### Definition of Realized Gain or Loss and Unrealized Gain or Loss

Pursuant to 840 CMR 23.01, a realized gain (loss) is any profit (loss) sustained on the sale or maturity of any investment of any system, due to the amount received being more (less) than the book value on the date of its sale or maturity. An unrealized gain (loss) is any amount by which the market value of any investment required to be valued at its market value pursuant to M.G.L. c. 32, § 21, paragraph (b) is more (less) than the value at which such investment was included in the assets of the system on the date of the last previous valuation.

### Regulatory Authority

840 CMR 23.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 25.00

## The Conduct of Field Examinations of Contributory Retirement Systems

### Section

#### 25.01 Examination of Contributory Retirement Systems

### 25.01

#### Examinations of Contributory Retirement Systems

840 CMR 25.00 is the standard rule for the conduct of field examinations of contributory retirement systems promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50(a) and c. 32, § 21(1)(a). Except as otherwise provided by the Commission, by the supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 25.00 shall govern any examination of the financial condition of a contributory retirement system.

Examinations of contributory retirement systems are conducted in accordance with generally accepted auditing standards to determine the system's financial condition, to monitor performance under the terms of its legal, contractual and fiduciary requirements, and to examine the system's effectiveness in achieving the intended results established by M.G.L. c. 32.

An examination of each system shall be conducted at intervals not exceeding every three years to ascertain the system's financial condition, its ability to fulfill its obligations, whether all parties in interest have complied with the laws applicable thereto, and whether the transactions of the board have been in accordance with the rights and equities of those in interest.

The examination of a retirement system encompasses the period beginning on January 1 immediately following the ending date of the preceding M.G.L. c. 32, § 21(1)(a) examination. An examination of each intervening year must be conducted as well as a cursory review of the current year to ensure that the board is presently operating within the practices and procedures prescribed by the Commission.

Prior to the start of the examination, the Board's Administrator will be provided with the Internal Control Review Questionnaire prescribed by the Commission. This questionnaire is designed to assist in understanding and evaluating internal controls. It consists of general questions that apply to all retirement boards, however, it does not purport to cover all aspects of internal control present at a particular system.

The board of any system may have an examination of its financial condition conducted by a certified public accountant or a public accountant selected by the board. Immediately upon the employment of such person or firm, the board shall file said individual's name and address with the Commission. Within ten days of making a report on the financial condition of the system to the board of such system, the individual or firm conducting the examination shall file a certified copy thereof with the Commission.

Any such examination conducted in accordance with 840 CMR 25.00 shall be deemed upon acceptance by the Commission to be the examination required by M.G.L. c. 32, § 21(1)(a). To be so accepted by the Commission the examination must cover the period beginning on January 1st of the year following the completion of the most recent examination conducted pursuant to said M.G.L. c. 32, § 21(1)(a), and ending on the most recent December 31st .

An examination conducted by a certified public accountant or a public accountant selected by a retirement board will only be accepted in lieu of a M.G.L. c. 32, § 21(1)(a) examination if the individual or firm conducting said examination meets with a designee of the Commission within 30 days of the filing of the certified copy of the report of such examination; provided further, that copies of all work papers and schedules prepared during the course of the audit are submitted at the time of such meeting.

An examination by a certified public accountant or a public accountant selected by a retirement board which is not conducted completely in accord with 840 CMR 28.00 may be deemed by the Commission to be acceptable with qualification as the examination required by M.G.L. c. 32, § 21(1)(a); provided, that the Commission shall cause its designees to conduct a supplemental examination of the retirement system to satisfy such qualification. In conducting such a supplemental examination, the Commission may utilize and rely on such portions of the report and supporting documentation prepared by the board selected auditor as it deems appropriate.

## Regulatory Authority

840 CMR 25.00: M.G.L. c. 7, § 50; c. 32, § 21.

# 840 CMR 26.00

## Consultants

### Section

- 26.01 Application for Approval by the Public Employee Retirement Administration Commission
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840 CMR 26.00 is the standard rule for the retention of a consultant promulgated by the pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 26.00 is the standard rule for the approval of a consultant.

### 26.01

#### Retention of a Consultant

- (1) Any board which employs a consultant must apply for approval of the consultant from the Commission by filing an application for approval on Form 25 with the Commission. Such application shall take place with respect to consultants employed as of the effective date of 840 CMR 26.00, prior to the board executing a contract extension, renewal or new contract or six months after the effective date of 840 CMR 26.00, whichever is earlier.
- (2) Any such consultant must be registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 et seq.).
- (3) Any such consultant must be deemed a qualified consultant by the Commission prior to providing services to the board.
- (4) Boards shall use the following process in selecting consultants:
  - (a) Boards shall establish specifications and criteria for selection including:
    - 1. whether a full-line consulting firm will be employed or whether a limited-line firm will be employed;
    - 2. the type of firm to be selected (a firm offering a wide range of products or services or a firm specializing in the consulting area);

3. the experience of the consulting firm's personnel;
4. an initial determination as to whether the existing consultant will be retained automatically;
5. the range of fees that are considered tolerable; and
6. the consultant's experience in policy restrictions including South Africa and Northern Ireland and tobacco.

(b) A written contract shall be executed stating all terms and conditions of employment including, but not limited to, an itemized list of services to be provided, term of employment, fees and termination provisions. No contract shall contain a provision which requires the indemnification of the consultant by the retirement board. A copy of every contract shall be retained by the board and be subject to audit by the Commission.

(5) Fee schedules shall not be based on a percentage of assets but shall be based on a fixed dollar amount based on services provided.

(6) A consultant shall inform the and the board of any arrangements, oral or in writing, for compensation or other benefit received or expected to be received by the consultant or a related person from others in connection with the consultant's services to the board.

(7) A consultant shall disclose to the Commission and the board any compensation paid or expected to be paid, directly or indirectly, by the consultant or a related person to others for referring the services of the consultant to the board.

(8) A consultant shall disclose to the Commission and the board in writing any conflict of interest the consultant may have which could reasonably be expected to impair the consultant's ability to render unbiased and objective advice.

(9) All consultants shall submit Form ADV Part II of the Uniform Application for Investment Adviser Registration to the board and to the Commission.

## 26.02

### Determination of Qualifications of Consultant; Review of Application

(1) Consultant. The Commission shall determine, for every application for approval, whether the board has a consultant registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 et seq.) as required by 840 CMR 26.01(2).

(2) Review of Application. If the Commission determines that the board has a consultant as required by 840 CMR 26.01(2), the Commission shall review the selection process of the consultant, review the information contained in the application for approval, and review the professional qualifications of the consultant in accordance with 840 CMR 26.03.

## 26.03

### Rating of Qualifications for Consultants

In rating qualifications for consultants the Commission shall develop and disseminate objective criteria uniformly to be applied in an equitable fashion. These criteria shall include, but not be limited to, the professional qualifications of the consultant, public and private pension accounts as of the year preceding the year of application, staffing of consulting organization, consulting organization, and reporting and client servicing.

## 26.04

### Qualified Consultant

(1) Qualified Consultant. Consultants assigned 70% or more of the total applicable points pursuant to the criteria developed in accordance with 840 CMR 25.03 shall be deemed qualified.

(2) The Commission shall also consider other factors, including but not limited to, any regulatory action, litigation, or legal proceedings involving the consultant in the past five years and any other matters relating to the qualifications of the consultant and shall determine whether any such matters warrant denial of an approval. The Commission shall notify the board and the consultant of the reasons for any such denial of approval. The Commission may withhold approval of a consultant if it is in the best interests of the retirement system.

(3) Starting January 1, 1999, on or before the fifth anniversary of the hiring of a consultant and every fifth year thereafter, the retirement board shall request authorization from the Commission to continue to retain said consultant. The Commission shall re-evaluate said consultant in accordance with the provisions of 840 CMR 26.03 and determine if continued approval is warranted pursuant to 840 CMR 26.04.

## 26.05

### Change of Consultant

Any board granted approval to retain a consultant that terminates its consultant shall notify the Commission within ten days. Termination of an approved consultant voids the approval granted to the board pursuant to 840 CMR 26.04(1).

## 26.06

### Revocation of Qualification by the Commission

(1) If the Commission has reason to believe that a board granted approval to retain a consultant pursuant to 840 CMR 26.04(1), or the investments of any such board, do not comply with the requirements of M.G.L. c. 32, § 23(2), or with the requirements of 840 CMR 16.00 through 26.00, the Commission may require the board to show cause why the qualification of the consultant should not be revoked. If the board fails to establish that its investments do so comply, the Commission may revoke the qualification of the consultant.

(2) If the Commission determines that an action of a consultant, including but not limited to, involvement in any regulatory action, litigation or legal proceedings, change in principals or senior professionals, or ability to perform significantly impairs or changes the consultant's ability to perform, the Commission may require the board to show cause why the qualification should not be revoked. If the board fails to establish that the consultant is capable of discharging its duties, the Commission may revoke the qualification.

### Regulatory Authority

840 CMR 26.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23

# 840 CMR 27.00

## Standard Rules for Orders to Protect the System

### Section

- 27.01 Temporary Orders
- 27.02 Investigations and Hearings
- 27.03 Findings of Fact
- 27.04 Permanent Orders

840 CMR 27.00 is the standard rule for orders to protect the system and investigations and hearings related thereto promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23(4). Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 27.00 is the standard rule for orders to protect the system and the conduct of investigative hearings to determine whether the investment and recordkeeping practices of any retirement board are being conducted with reasonable care, skill, prudence or diligence pursuant to M.G.L. c. 32, § 23(4).

### 27.01

#### Temporary Orders

The Commission, upon reasonable belief that the investment or recordkeeping practices of any retirement board are not being conducted with reasonable care, skill, prudence or diligence, may order such retirement board to take or cease from taking any action that in his/her judgment is necessary to protect the integrity of the retirement system. Any such order issued by the Commission shall remain in effect until such time as an investigation, hearing and finding of fact can be made pursuant to the provisions of 840 CMR 27.00 and M.G.L. c. 32, § 23(4). Violation of such orders shall be punishable as provided in M.G.L. c. 32, § 24.

### 27.02

#### Investigations and Hearings

(1) Investigations; Requests for Information. The Commission, upon reasonable belief of improprieties in the investment or recordkeeping practices of any retirement system, may initiate an investigation of such practices. In connection with such investigation the Commission may require the retirement board to provide information which may be deemed relevant thereto. Any such information contained in any document, paper, correspondence or

other record maintained by the retirement board shall be provided to the Commission upon request. Any findings of fact made by the Commission or a designee pursuant to 840 CMR 27.03 shall reflect evidence obtained from such information as well as evidence presented at a hearing conducted pursuant to 840 CMR 27.02(2).

(2) Purpose of Hearings; Notice Requirements. In cases where the Commission has issued a temporary order pursuant to M.G.L. c. 32, § 23(4) and 840 CMR 27.01, an investigative hearing may be convened within 60 days thereafter. In all other cases the Commission may convene such hearing at any time; but in no case shall the retirement board whose investment or recordkeeping practices are under investigation be given less than 30 days prior notice of such hearing. The purpose of such investigative hearing shall be to determine whether the investment or recordkeeping practices of the retirement board are being conducted with reasonable care, skill, prudence or diligence. The notice of hearing shall set forth the retirement board practice(s) under investigation and outline the procedures to be followed in such hearing.

(3) Parties, Procedures for Hearings. Upon notice from the Commission to any retirement board that an investigative hearing is to be held pursuant to 840 CMR 27.02(2), such retirement board personnel as are named in the notice shall appear to represent the retirement board before the Commission or a designee on the date specified therein. The Commission may also require parties not affiliated with the retirement board to appear at such hearing, if there is reason to believe that such party has influenced the investment or recordkeeping practices of the retirement board. The procedures to be followed in such investigative hearing shall be subject to the discretion of the Commission. Any retirement board or party who is requested to appear may be represented by counsel. Such parties shall be allowed to present evidence as to the propriety of the practice under investigation.

## 27.03

### Findings of Fact

At the conclusion of the investigation conducted pursuant to M.G.L. c. 32, § 23(4) and 840 CMR 27.02, the Commission or a designee shall make such findings of fact as are warranted from the evidence collected during the course of the investigation and at the hearing. Such findings of fact shall be made in writing and a copy thereof shall be delivered to the retirement board, any other party requested to appear at the hearing and their counsel. Any permanent order to the retirement board to take or cease from taking any action shall be based upon such findings of fact.

## 27.04

### Permanent Orders

After having conducted an investigation and hearing pursuant to M.G.L. c. 32, § 23(4) and 840 CMR 27.02 and making such findings of fact as are warranted by the evidence collected during the course of such investigation and hearing, the Commission may order the subject

retirement board to take or desist from taking any action that in its judgment is necessary to preserve the integrity of the system. No such order shall obtain unless the Commission may reasonably conclude from such findings of fact that the investment or recordkeeping practices of the retirement board are not being conducted with reasonable care, skill, prudence or diligence. Violation of such order shall be punished as provided for in M.G.L. c. 32, § 24.

## Regulatory Authority

840 CMR 27.00: M.G.L. c. 7, §50; c. 32, §§ 21 and 23(4).

Five Middlesex Avenue  
Third Floor  
Somerville, MA 02145

*ph* 617 666 4446  
*fax* 617 628 4002  
*tty* 617 591 8917  
*web* [www.mass.gov/perac](http://www.mass.gov/perac)

